

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: July 30, 2025

CASE NO(S): OLT-25-000150
OLT-25-000232

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act, R.S.O.* 1990, c. P. 13, as amended.

Applicant/Appellant:	Larry Pomerantz
Owner:	Giovanni Diflavio
Subject:	Zoning By-law
Description:	Outdoor Storage Facility
Reference Number:	1601-010-23
Property Address:	9127 Regional Road 20
Municipality/UT:	West Lincoln/Niagara
OLT Case No:	OLT-25-000150
OLT Lead Case No:	OLT-25-000150
OLT Case Name:	Pomerantz v. West Lincoln (Township)

PROCEEDING COMMENCED UNDER subsection 38(4) of the *Planning Act, R.S.O.* 1990, c. P. 13, as amended.

Appellant:	Larry Pomerantz
Subject:	Interim Control By-law Appeal of Interim Control By-law for the purpose of developing an Outdoor Storage Facility
Description:	
Reference Number:	By-law No. 2025-25
Property Address:	9127 Regional Road 20
Municipality/UT:	West Lincoln/Niagara
OLT Case No:	OLT-25-000232
OLT Lead Case No:	OLT-25-000150

Heard: June 20 and 23, 2025, by Video Hearing

APPEARANCES:**Parties**

Giovanni Diflavio (Owner) Larry
Pomerantz (Agent)

Township of West Lincoln

Counsel

B. Duxbury

J. Reynar
D. Chronis Marks (*student-at-law*)

**DECISION DELIVERED BY C. HARDY AND S. BRAUN AND ORDER OF THE
TRIBUNAL**

BACKGROUND

[1] This Decision and Order address appeals by Giovanni Diflavio (“Owner”) through his Agent, Larry Pomerantz (“Appellant”) against decisions of the Township of West Lincoln (“Township”) in relation to 9127 Regional Road 20 (“Subject Property”).

[2] The first appeal (Tribunal Case File No. OLT-25-000150) concerns a February 10, 2025, Decision on an application to extend a temporary use by-law (“TUBL2024”). TUBL2024 permitted the outdoor storage of rain barrels, composters and other items related to the operation of Mr. Pomerantz’s business on a 2.4-acre (“ac”) portion of the Subject Property (“Site”) for a period of 12 months (expiring on February 26, 2025), subject to certain conditions. The requested extension sought a period of three years or until the recommendations of the Fulton Rural Employment Land Use Study (“Study”) were released. The Township refused the extension, instead enacting a new Temporary Use By-law, “TUBL2025”, permitting the temporary outdoor storage of rain barrels/composters on the same 2.4 ac Site for a period of four months (expiring on June 10, 2025), “to allow for the orderly removal of the existing barrels”, subject to conditions which include “no additional barrels” being permitted on the Subject Property.

[3] The second appeal (Tribunal Case File No. OLT-25-000232) concerns the February 10, 2025, adoption of Interim Control By-law 2025-05 ("ICBL"), which followed the decision to enact TUBL2025. The effect of the ICBL is to temporarily suspend any further land use planning changes on the Subject Property, along with three other nearby properties, while the Township undertakes a review of its planning policies.

[4] Mr. Pomerantz operates a business repurposing plastic barrels formerly used for the storage of food (such as pickles) into rain barrels/composters, which he then sells wholesale locally, nationally and within the United States. The barrels are stored outside on the 2.4 ac Site, which he rents from the Owner. The remainder of the 48.7 ac Subject Property is actively farmed with cash crops.

[5] Outdoor storage of barrels is not a permitted use on the Subject Property under the Township's current planning framework. However, the Appellant applied for a temporary use by-law pursuant to s. 39 of the *Planning Act* ("Act") to permit the use on the Site for a period of three years. Township planning staff supported the temporary use, but recommended a period of 18 months. On February 26, 2024, Township Council passed TUBL2024, but reduced the period to 12 months from the recommended 18 months and the requested three years.

[6] There was no appeal of the 12-month expiry of TUBL2024 and the present appeal in relation to the temporary use of the Site arises out of TUBL2025. For the most part, the content of the two temporary use by-laws are the same, but for the following important distinctions:

- The first and most obvious distinction are the dates of expiry, with TUBL2025 being "for a period not to extend beyond 4 months" and TUBL2024 being "for a period not to extend beyond 12 months";
 - TUBL2025 permits "temporary outdoor storage of rain barrels/composters *to allow for the orderly removal of barrels...*"

(emphasis added), whereas TUBL2024 permitted “outdoor storage for rain barrels/composters”; and

- TUBL2025 includes a new condition that “no additional rain barrels are permitted on the Subject Lands”.

[7] It is undisputed that, but for the temporary use permissions, the use is not permitted on the Subject Property. It is also undisputed that the current zoning and designation of the Subject Property are expected to change following the outcome of the Study, but there are no guarantees that outdoor barrel storage will be a permitted use.

[8] The Tribunal was tasked with determining whether the expiry of TUBL2025 should be extended and, if so, whether the condition prohibiting additional barrels should be removed. The Tribunal was also tasked with determining whether the ICBL was lawfully enacted for a legitimate planning purpose and, based upon its findings in that regard, whether the ICBL ought to be maintained, quashed or varied.

DECISION

[9] Based on the evidence and findings discussed in further detail below, the Tribunal grants the appeal of TUBL2025, in part, extending the temporary use for a further three years from February 10, 2025, and removing the condition prohibiting additional barrels on the Subject Property. In addition, the Tribunal dismisses the appeal of the ICBL, which shall be maintained.

[10] To be clear, this decision is in no way an endorsement of any long term/future use of the Site. Rather, it is intended to allow time for the new planning framework to emerge, against which the outdoor barrel storage use can then be evaluated. This will provide both Parties with a measure of clarity that does not presently exist as a result of the area being in transition, from a planning perspective.

PRELIMINARY PROCEDURAL MATTERS

[11] This was the only hearing event for these appeals, which were scheduled concurrently for efficiency. As such, the Tribunal confirmed that proper Notice was given in relation to both Case File No(s). OLT-25-000150 and OLT-25-000232 and marked the Affidavits of Service as Exhibits 1 and 2, respectively.

[12] One written request for Participant status was received in advance of the hearing from Lilian Jovic, a nearby resident, who opposes the appeal of the temporary use by-law. That request was granted with no objections. The Tribunal has considered the content of her statement, as well as video footage submitted in the course of making this decision.

[13] Although no other individuals appeared at the hearing to request status of any kind, on the morning of the second day of the hearing, an individual with no standing submitted a statement in opposition to the appeal, but made no request for standing of any kind. In addition, on the same morning, Ms. Jovic submitted further information to the case coordinator. The Tribunal refused to accept/consider both of the above, finding that to do so, would be prejudicial to the Appellant, given that all three witnesses called in support of his case, had already given testimony and would not have had an opportunity to review or comment upon any of the above.

[14] Following preliminary procedural matters, counsel for the Appellant requested the appeals be consolidated, noting a significant amount of overlapping evidence. Having been satisfied that this would result in a more efficient hearing, the request was granted without objection pursuant to Rule 16.1 of the Tribunal's *Rules of Practice and Procedure*, which empowers the Tribunal to order two or more proceedings consolidated or heard together.

LEGISLATIVE FRAMEWORK AND KEY ISSUES

[15] As with all planning decisions, the Tribunal must be satisfied that the proposed instruments have regard for matters of provincial interest in s. 2 of the Act, demonstrate consistency with the Provincial Planning Statement 2024 (“PPS”) and are representative of good planning in the public interest. Regard must be given to the decision made by the Township Council and the information/material considered by it.

[16] With respect to TUBL2025, the Tribunal must also be satisfied that there is conformity with the Region of Niagara Official Plan (“ROP”) and the Township of West Lincoln Official Plan (“TOP”).

[17] With respect to the ICBL, the Tribunal must be satisfied that it was lawfully enacted in accordance with s. 38 of the Act, that the Township has substantiated the planning rationale behind its enactment, that it conforms with the TOP and that the review of the Township’s planning policies is being carried out fairly and expeditiously.

[18] The decision in relation to TUBL2025 turns primarily on s. 18.4.1 of the TOP and specifically, whether the use of the Site is a) temporary and b) whether compelling evidence exists that the use results in detrimental effects on the surrounding area. In relation to the ICBL, the decision turns primarily upon an evaluation of the facts of the case against s. 38 of the Act. Ultimately, the Tribunal’s decision on both issues boils down to a determination of what, under the circumstances, is good planning in the public interest.

THE HEARING

[19] The Tribunal heard from Michael Sullivan (for the Appellant) and Gerrit Boerema (for the Township), both of whom were qualified to provide land use planning opinion evidence. In addition, Feng Shi was qualified to provide opinion evidence on stormwater

drainage and design for the Appellant. The Tribunal also heard lay witness testimony from the Appellant, Larry Pomerantz.

[20] In July 2022, the Township approved Official Plan Amendment 62 (“OPA 62”), which added additional lands (the Subject Property, along with three other properties) to the Hamlet of Fulton. Those additional lands were intended to become a Rural Employment Area to support a variety of businesses. At that time, the Township recognized that amendments to the TOP were required to achieve consistency with provincial plans and conformity with the ROP. Although the documentary evidence, including the Township staff reports in relation to TUBL2024, consistently referenced an ongoing Secondary Plan process, the Tribunal heard the Township is no longer pursuing a Secondary Plan and is instead undertaking a conformity exercise.

[21] To that end, in early November 2024, the Township hired WSP Group (“WSP”) to conduct the Study, the recommendations of which will inform a Fulton Land Use Plan Official Plan Amendment and Zoning By-law Amendment. The Terms of Reference and Request for Proposal for the Study include the following statement:

Within the last few years, the Township has experienced a need for rural employment lands as a number of businesses have been setting up without the appropriate planning approvals throughout the agricultural areas of the Township. These businesses have shown a demonstrated need for West Lincoln to make available rural employment lands for businesses that do not require fully serviced lots such as storage yards for various contracting businesses and which are not agricultural in nature.

TUBL2024

[22] The Tribunal acknowledges TUBL2024 is not before it in this hearing, however, details surrounding TUBL2024 are relevant in providing context relating to the appeal of TUBL2025.

[23] Mr. Pomerantz testified that, prior to TUBL2024, he approached the Township for assistance in locating a large site for barrel storage. Planning staff encouraged him to consider Smithville or the Hamlet of Fulton, given the “soon to be coming online Fulton

Employment Area”. After finding the Site, he again approached the Township for guidance on his proposed outdoor barrel storage use, making it clear that it was his intent to conduct business there long term. This was acknowledged by planning staff in the Recommendation Report on the initial temporary use application (“2024 Recommendation Report”), which specifically notes in response to public comments:

Mr. Larry Pomerantz confirmed the intent is to conduct the business for a long term and this site is the ideal location for the business and if it was not to be successful then he would be responsible to remove the product to an alternative location.

[24] With respect to the foregoing, Mr. Pomerantz explained it is more difficult and time consuming to remove all of the barrels from the Site than to receive and store them, due to logistical limitations as well as the challenge of finding a large enough alternative property with appropriate zoning permissions. He candidly discussed this with the (then) Manager of Planning prior to TUBL2024, as he was concerned that planning staff had recommended less than the three years requested. He stated that he was assured an extension would be automatic if he was “running a clean operation”.

[25] The Township required Mr. Pomerantz to enter into a Temporary Use Agreement, which was executed on March 18, 2024 (“Agreement”). The Agreement relates to “the establishment of 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...*or extensions thereto*” (emphasis added). The Agreement required substantial grading and stormwater management works, which Mr. Pomerantz testified took a significant amount of time and tens of thousands of dollars to complete. In addition, he was required to remit a total of \$25,000.00 in financial securities, which the Township still holds.

TUBL2025

[26] As the 12-month expiry date approached, the Study was just getting underway, and Mr. Pomerantz applied to extend TUBL2024 by three years (or until the release of the Study recommendations). He testified that, he had not been made aware of any complaints from the Township, the public or other relevant agencies and, based on previous conversations with planning staff, he was surprised at Council's decision requiring the removal of all barrels in four months.

[27] The majority of the evidence presented revolved around TOP s. 18.4.1, which allows the temporary authorization of otherwise prohibited uses, provided the proposed use is temporary and will not create detrimental effects on the surrounding area. The Township's position is that the use creates detrimental effects, and is not temporary.

Detrimental Effects

[28] Mr. Boerema testified that it became apparent, from his review of public comments during consideration of the extension application, that the use was not compatible with, and resulted in the following detrimental effects on, the surrounding area.

Fire and environmental safety risks

[29] According to Mr. Boerema, the scale and volume of barrels would impede the local fire department from controlling a fire, and could result in contamination from run-off and smoke, should a fire occur. He further asserted that concerns regarding potential environmental contaminants were raised in conversations he had with a compliance officer at Ministry of Environment, Conservation and Parks ("MECP"). However, no compelling evidence was presented to substantiate the foregoing.

[30] Comments from Fire Services indicate the barrels are made of a material which is difficult to ignite and sustain burning and, as such, the material is not covered in the

Ontario Fire Code. The Appellant testified that he had not been required to submit a fire plan for TUBL2024, but this became an issue when Council rejected the application to extend same. He further testified that following the enactment of TUBL2025, he submitted a fire safety plan and fire access route diagram directly to the Fire Chief, which has prompted no further comments or follow up.

[31] With regard to environmental concerns, Mr. Pomerantz testified that the barrels are food grade and are rinsed off-site and stored upside down, ensuring they are dry and free from contaminants upon arrival at the Site. Further, although MECP inspected the Site immediately following the enactment of TUBL2025, there has been no follow up or further communication from MECP.

[32] On the basis of the foregoing, and in the absence of compelling evidence to the contrary, the Tribunal finds the concerns raised in relation to fire and environmental safety risks are not detrimental effects, but merely unsupported apprehensions.

Stormwater management/drainage

[33] Although Mr. Boerema opined that the use creates detrimental drainage and stormwater effects on the surrounding area, the best and only expert evidence in this regard was Mr. Shi's uncontested opinion evidence that there are no drainage concerns and that, as a result of works completed by the Appellant, both quantity and quality control of stormwater has been achieved. Based on the foregoing, the Tribunal finds the concerns raised in relation to drainage and stormwater also amount to unsupported apprehensions rather than detrimental effects.

Size/scale and visual impacts

[34] Despite conceding that the size/scale of the use was supported by planning staff and approved by Council in both temporary use by-laws, Mr. Boerema opined that the size/scale is not in keeping with the rural character of the area. He also referenced public comments about the visual unsightliness of the barrels and provided his own

impressions of visual impacts based on visits to the Site. He rejected Mr. Sullivan's comparison of the barrels to large plastic-wrapped straw bales, and testified that seeing barrels from the road is detrimental to the rural character of the area. While detrimental effects are not defined in the TOP, he urged the Tribunal to consider the public's comments, opining that they are valuable in understanding "rural character".

[35] He further noted that the use lacks a connection with surrounding agricultural uses and should therefore cease, representing a reversal of planning staff's 2024 Recommendation Report, which supported the temporary use in spite of that fact:

This application for a temporary use is not explicitly related to agricultural uses, however the section of the site that is proposed to be used for the outdoor storage is not currently actively farmed or used for agricultural uses and will be situated between the existing berms and existing buildings separate from the areas being farmed.

[36] In relation to both size/scale and visual impacts, the Tribunal was presented with several photos and videos of the Site, as well as Schedule B of the Agreement, which are conceptual site plan drawings that Mr. Pomerantz testified were prepared by Township planning staff. The drawings show the approximate location of the berms, green circles, representing trees to be planted for visual screening, and an orange triangle ("Triangle").

[37] The Tribunal heard from the Township that the Triangle represents the area where the barrels are permitted to be stored and that, at present, the barrels extend beyond the Triangle. In contrast, Mr. Pomerantz testified that he understood barrels were to be stored in a general triangular area between the berms and, as long as he did not store barrels outside of the berms or exceed the 2.4 ac of allowable storage space, the use would be compliant with the by-law and Agreement. When taken to a photo on page 28 of the joint document book, Mr. Pomerantz confirmed it shows barrels stored between the berms with approximately 80% of the permitted 2.4 ac of storage space in use. He testified that at present, 20% of the storage space remains free.

[38] The majority of the visual evidence is aerial in nature, and the Tribunal accepts the submission of counsel for the Appellant, that it does not accurately reflect the lived experience or “on the ground” perspective. Mr. Sullivan testified that while there are some barrels visible in photos taken from the ground looking into the Site from Regional Road 20, a barn, a pond and existing vegetation provide screening that appropriately mitigates visual impact. In addition, Mr. Boerema conceded on cross examination that the berms and buildings provide screening from the street view and the neighbouring properties.

[39] The Tribunal finds Schedule B to the Agreement, which lacks any sort of precision in terms of measurement, represents an approximate area for the outdoor storage use. In the Tribunal’s view, what is important, is that the use not exceed 2.4 ac and that the barrels get stored between the berms to mitigate visual impacts on the surrounding area. The Tribunal was not persuaded that the use results in detrimental effects from a visual standpoint, and finds the Township’s characterization of the size/scale of the use as a detrimental effect to be internally inconsistent with previous recommendations and decisions in relation to the use. In so finding, the following excerpts from the 2024 Recommendation Report were considered significant:

...Planning staff consider the location and size of the outdoor storage area to be acceptable and appropriate for the intended use while avoiding direct impacts to the agricultural operations and adjacent agricultural uses...

...The proposed maximum height of the barrels is 4.8 metres or 16 feet high and nestled in between the existing earth berm behind the barn offering some screening from the view to the street and neighbours.

[40] The Tribunal prefers the opinion of Mr. Sullivan, who testified that the technical merits of the application remain unchanged from the circumstances which led to the approval of TUBL2024, noting that if the use were to result in any detrimental effects, they could be appropriately mitigated through monitoring, reporting and action. Indeed, Mr. Pomerantz testified that although he is able to alter the view by changing the height/configuration of barrels or plant trees on top of the berms, the Township has never requested any of the above.

Temporary

[41] Mr. Boerema testified that planning staff understood, from conversations with Mr. Pomerantz, that his business was cyclical/seasonal in nature, with barrels being received and stored at certain times of the year and sold/removed from the Site at others. Indeed, much of the argument advanced by the Township hinged upon the fact that a large number of barrels had been placed on the Site, but had not later been removed. For this reason, Mr. Boerema opined that Mr. Pomerantz was using the Site for permanent, rather than temporary, storage.

[42] According to Mr. Boerema, the use was only ever intended to be limited to a period of 12 months. He referenced the Act and the TOP noting that, upon expiry, uses permitted under a temporary use by law must cease, and cannot be considered non-conforming. When Mr. Boerema visited the Site in late 2024, despite the approaching expiry date, he saw no evidence of the business winding up or preparing to move from the Site. As such, it was his opinion that the Appellant was attempting to establish a permanent use through temporary use extensions.

[43] Counsel for the Township drew attention to *P.A.R.C.E.L. Inc. v. Markham (City)*, 2018 CanLII 32184 ("*P.A.R.C.E.L.*"), where it was found that an intended long-term use requires permanent, rather than temporary zoning. He submitted that the Appellant should have applied for permanent zoning, and that he failed to conduct business in a way that recognized the limited opportunity the temporary use by-law provided, choosing to rely on a misplaced expectation that there would be an extension.

[44] Mr. Pomerantz explained that he simply followed guidance provided by planning staff:

...a temporary use by-law was pursued because that was the **only** option that was presented to me in my initial dealings with staff at the Township. It was not intended to be limited to 12 months (staff supported 18) and it was intended to be extendable in order to get to the conclusion of the Secondary Plan process. There was certainly never any indication in my discussions

with staff that at the end of the first 12-month period that would be the end of any temporary use of my property.

He also produced an email received on January 13, 2024, from (then) Director of Planning and Building, Brian Treble (copied to Susan Smyth, Senior Planner and author of the Technical and Recommendation Reports on the initial temporary use application, as well as Mr. Boerema (then) Manager of Planning and Building, who approved the aforementioned Reports). That email states:

The only thing that I gathered from my pre agenda discussions is that the Councillors are going to want less than three years given the history of issues¹ on this site. **Even if you only get one year, it can be extended if we are not ready with the Secondary Plan by then** (emphasis added).

[45] The Tribunal was not persuaded that the temporary use was, in fact, intended to cease after 12 months. The Agreement explicitly leaves open the possibility for an extension beyond the 12-month expiry. It also specifies that financial securities are to be returned in the event the Site is not deemed appropriate for continued outdoor barrel storage *in the Secondary Plan and Zoning By-law for rural employment use...or...in the event the use is permitted under these instruments* and the Parties execute a full Site Plan Agreement (emphasis added).

[46] The 2024 Recommendation Report also consistently links the temporary use to the completion of the conformity exercise.

...The temporary use and operations of the outdoor storage of the rain barrels/composters will assist the Township to determine whether this business fits in the land use growth for rural employment geared to localized service commercial and light industrial uses as part of the Secondary Plan process and whether it can offer vitality to the immediate area...

...Planning Staff considers the temporary use is providing some employment opportunities while continuing to protect the active agricultural use on the subject lands until the Secondary Plan process is completed. This will lend

¹ For clarity, "the history of issues" referenced are irrelevant to the appeals before the Tribunal, as they relate to the Owner's previous use of the Subject Property, as distinct from Mr. Pomerantz's use, which had not yet commenced.

time for the Township to complete the Secondary Plan and determine the optimal long term land use for the area including the subject lands...

...Planning Staff will be undertaking the 5-year Official Plan Review as well as the Secondary Plan for the Fulton Hamlet settlement area geared towards employment lands. This application for a Temporary Use is utilizing time until these processes are completed at which time a more definitive land use and zoning regulations will be contemplated and this Temporary Use will be reassessed to confirm its appropriateness...

...Upon expiry of the temporary use by-law, uses permitted by that by-law must cease and cannot be considered as non-conforming uses, *unless addressed by the Official Plan land use designation changes and zoning by-law amendment confirming the temporary use is deemed appropriate and meets the intent of the rural employment area* (emphasis added).

[47] The Appellant openly acknowledged a wish to operate on the Site long term. He also acknowledged that it is questionable whether his business will fit into the future designation and permissions on the Site. However, in accordance with the above rationale, he asks that the use be permitted to continue until that question can be answered.

[48] Mr. Boerema opined that allowing the use to continue could create future constraints on future policies and impact the future ability of properties to develop for rural employment uses. In contrast, Mr. Sullivan opined that the requested extension does not create permanence, nor does it preclude future considerations that may be reflected in the Study's findings. He further opined that it is good planning to allow the business to operate responsibly and support local economic activity during the planning transition, in accordance with the rationale in the 2024 Recommendation Report.

[49] The Tribunal finds the use was intended to continue until completion of the conformity exercise. Both the Agreement and the 2024 Recommendation Report clearly contemplate evaluation of the use against future TOP policies and the future Zoning By-law. The Tribunal was not persuaded that the Appellant is attempting to achieve a permanent use through the extension application, and considers the facts of this case distinguishable from *P.A.R.C.E.L.*, where a new Secondary Plan had been recently adopted, against which the use could be (and was) evaluated.

[50] The Tribunal further finds the use to be temporary for the purposes of s. 18.4.1 of the TOP. There have been no permanent changes to the Site precluding a return to its previous state should the outdoor barrel storage use cease. In so finding, the cyclical/seasonal nature of the business and when or whether barrels move on and off the Site was considered irrelevant. Neither TUBL2024 nor the Agreement included any requirement for barrels to be moved off the Site prior to the expiry date or extensions thereto.

[51] Although Mr. Boerema ultimately concluded that the use is not compatible with the rural character of the area, the Tribunal preferred the opinion of Mr. Sullivan, who noted that the area is in transition and includes a mix of uses (including agricultural, residential and commercial) and that the Study will determine whether this area should be used to accommodate businesses, like that of Mr. Pomerantz, which do not otherwise “fit” anywhere else.

[52] In relation to s. 2 of the Act and the tests of consistency and conformity, the Tribunal accepts, as submitted by the Appellant’s counsel, that the best evidence is contained within the Township’s early technical review and 2024 Recommendation Report prior to TUBL2024, the circumstances and rationale for which have not changed. In light of those reports along with the balance of the evidence presented at this hearing, the Tribunal is satisfied that the necessary legislative tests have been met. The use does not pose health and safety risks or interfere with the protection of agricultural resources, and it leverages rural assets to contribute to a mix of employment opportunities in the area.

TUBL2025 CONCLUSIONS

[53] Overall, Mr. Pomerantz’s evidence was found to be credible and reliable. The Tribunal accepts that, at all times, he acted in good faith and trusted that guidance received from Township planning staff was also given in good faith. He has made efforts to be compliant with TUBL2024, the terms of the Agreement and has complied

with more recent requirements, including submitting fire safety plans and emergency route diagrams.

[54] Counsel for the Township referenced a number of authorities to support the proposition that the Appellant ought to have sought independent land use planning advice (*Gemeinhardt v. Springwater (Township) Committee of Adjustment*, [2002] O.M.B.D. No 822); that his “ignorance” of the law is no excuse (*Guertin v. Welland (City)*, [1994] O.M.B.D. No. 1760; and that he cannot rely upon verbal communications/guidance of Township planning staff to subvert the Act or the TOP (*Mount Sinai Hospital Centre v. Quebec (Minister of Health and Social Services)*, 2001 SCC 41). The Tribunal finds these authorities distinguishable on the facts.

[55] In this case, there was no misunderstanding or miscommunication owing to a change in planning staff, as was found in *Gemeinhardt*. The planning rationales in the technical and 2024 Recommendation reports on the initial application were quite clear, and Mr. Boerema, who approved those reports, has been consistently involved. The Tribunal is not persuaded that Mr. Pomerantz seeks to subvert the Act or the TOP and demonstrates ignorance of planning policies. Rather, he understands his business may or may not fit into the future planning framework and simply seeks to extend the use, which has been found to meet the necessary legislative tests, during the ongoing conformity exercise. In the Tribunal’s view, he has been unfairly caught in the middle of what his counsel correctly characterizes as the Township’s reversal of its original position based on vague and unsubstantiated allegations of impacts by members of the public.

[56] Finally, while no explicit promise of an extension was made, the Appellant was entitled to request an extension under s. 39 of the Act and the terms of the Agreement. A reasonable person in receipt of the Township’s written communication of January 13, 2024, would expect an extension application to be considered in good faith if the conformity exercise remained incomplete.

[57] It is especially concerning that Mr. Boerema, who conceded the email could lead one to the conclusion that TUBL2024 would be extended, boldly testified that “planning staff doesn’t like dealing with appeals” and Mr. Pomerantz “shouldn’t have sought advice from Township staff, who are trying to avoid appeals”. The foregoing is suggestive of bad faith, and can only serve to undermine public trust in preconsultation and the planning process in general.

[58] In light of the above statements, the 2024 Recommendation Report, and the lack of compelling evidence that circumstances have changed, the position taken by the Township and portions of the evidence provided by Mr. Boerema were considered disingenuous and untenable. In the Tribunal’s view, the Township underestimated the time required for the conformity exercise and now unfairly seeks to change the narrative based upon unsupported apprehensions raised by members of the public, with Mr. Pomerantz’s business being collateral damage.

[59] On the specific facts of this case, an extension allowing the temporary use to continue pending the outcome of the current conformity exercise, represents good planning in the public interest. A three-year extension will allow approximately one year for the completion of the Study and the emergence of a new planning framework, against which the use can be properly evaluated. If the outdoor storage of barrels does not ultimately fit into that new planning framework, Mr. Pomerantz will have ample time to find an alternative location and remove the barrels from the Site.

[60] The Tribunal now briefly turns to the condition prohibiting additional barrels. The Appellant applied for, and received, permission to temporarily store rain barrels on a 2.4 ac portion of the Subject Property. The Tribunal accepts that the allowable storage space has not been exceeded and approximately 20% of that space remains free. In the view of the Tribunal, prohibiting additional barrels on the site would, in effect, shrink the amount of storage space permitted under the temporary use by-law without justification.

[61] Finally, it is noted that paragraph 6 of TUBL2025, requires the execution of an agreement containing conditions of the temporary use. Counsel for the Township requested, in the event of an order approving an extension of the temporary use, that the Parties be ordered to enter into a new Temporary Use Agreement, the terms of which should “look and feel similar to the [March 18, 2024] Agreement”.

[62] While it is acknowledged that TUBL2025 requires the execution of a temporary use agreement, this would be a private agreement between the Parties and, as such, the wording/content thereof is left to the Parties to negotiate, bearing in mind the decision of the Tribunal on TUBL2025.

ICBL

[63] In this instance, the ICBL was enacted immediately following TUBL2025, approximately three months after WSP was awarded the Study and Council directed a review of its land use planning policies. The Appellant takes the position that the ICBL is without planning justification, was enacted for an improper purpose and, although it purports to affect other properties, is intended to prevent him from bringing forward a future zoning application for outdoor barrel storage on the site.

[64] Mr. Sullivan did not, in principle, take issue with the ICBL. He opined that it is the appropriate tool to address the current period of planning transition in the area. However, the timing of its enactment led him to question the motives of the Township and, therefore, the legitimacy of the ICBL. Although he conceded s. 38 of the Act does not include specific timing parameters, he opined that the enactment of the ICBL should have coincided with Council’s November 11, 2024, decision to award the Study to WSP or the November 25, 2024 decision to undertake a policy review.

[65] Mr. Boerema disagreed, opining that the ICBL was appropriately enacted in accordance with s. 38 of the Act, which only requires a review or study of land use planning policies be directed by Council. He testified that the purpose of the ICBL is to

allow the Study to progress without intervening applications/permits being considered/issued which might impact the ability of the area to be used for future employment purposes. In his view, the Township took a fair approach because, had the ICBL been enacted prior to the lapse of TUBL2024, the Appellant would have been precluded from bringing forward the application for extension.

[66] With respect to the progression of the Study, he conceded there had been a delay following the enactment of the ICBL due to the intervening holiday period but noted that it had since been progressing efficiently. He testified that an update on the Study was provided at a public meeting just prior to the commencement of this hearing.

[67] The Tribunal finds the ICBL was lawfully enacted in accordance with the Act. The Township directed a review of land use planning policies on November 25, 2024 and the ICBL includes a legitimate planning rationale, which is to restrict development activity in the interim control area allowing time for the Township to review land use planning policies and regulations pertaining to future employment land uses in the area. Mr. Boerema opined that the ICBL meets the necessary legislative tests of consistency and conformity with applicable planning policies and that the Study is being carried out fairly and expeditiously. No evidence to the contrary was presented by the Appellant, and both planning witnesses agreed that the ICBL is the appropriate tool to limit new and expanding uses on lands subject to the ongoing Study.

[68] Ultimately, the Tribunal was not presented with any compelling evidence, nor does the Tribunal believe, that the ICBL was enacted for an improper purpose or to unfairly target the Appellant's business. Rather, it was intended to provide the Township with necessary "breathing room" to focus upon the conformity exercise. The Tribunal finds the ICBL meets all necessary legislative tests, represents good planning in the public interest and, as such, it should remain in force and effect.

ORDER

[69] In relation to OLT Case File No. OLT-25-000150, the appeal is allowed in part, and the Township of West Lincoln is hereby directed to amend the Temporary Use By-law (By-law No. 2025-04 being a By-law to amend Zoning By-law No. 2017-70, as amended, of the Township of West Lincoln) to reflect an expiry date of February 10, 2028 and to remove any conditions/references to a prohibition on additional barrels on the Subject Lands, being 9127 Regional Road 20.

[70] In relation to OLT Case File No. OLT-25-000232, the appeal is dismissed.

“C. Hardy”

C. HARDY
VICE-CHAIR

“S. Braun”

S. BRAUN
VICE-CHAIR

Ontario Land Tribunal

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The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.