

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: June 28, 2021

CASE NO(S): PL210104

PROCEEDING COMMENCED UNDER subsection 17(40) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: 30 Duke Street Limited
Subject: Failure of the City of Kitchener to announce a decision respecting Proposed Official Plan Amendment No. OPA 20/005W/JVW
Municipality: City of Kitchener
OLT Case No.: PL210104
OLT File No.: PL210104
OLT Case Name: 30 Duke Street Limited v. Kitchener (City)

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: 30 Duke Street Limited
Subject: Application to amend Zoning By-law No. 85-1 - Refusal or neglect of the City of Kitchener to make a decision
Existing Zoning: Commercial Residential Three Zone
Proposed Zoning: Site Specific (To be determined)
Purpose: To permit a 15 storey residential building
Property Address/Description: 22 Weber Street West
Municipality: City of Kitchener
Municipality File No.: 20/013/W/JVW
OLT Case No.: PL210104
OLT File No.: PL210105

Heard: June 23, 2021 by video hearing

APPEARANCES:

<u>Parties</u>	<u>Counsel</u>
30 Duke Street Limited	J. Meader
City of Kitchener	L. MacDonald
Regional Municipality of Waterloo	F. McCrea
Hal Jaeger and Aaron Scriver	P. Kraemer

MEMORANDUM OF ORAL DECISION DELIVERED BY HUGH S. WILKINS ON JUNE 23, 2021 AND ORDER OF THE TRIBUNAL

[1] 30 Duke Street Limited (“Appellant”) appealed the failure of the City of Kitchener (“City”) to make decisions with respect to the Appellant’s applications for official plan and zoning by-law amendments regarding the property located at 22 Weber Street West (“subject property”).

[2] On June 23, 2021, the Tribunal held a Case Management Conference (“CMC”) at which it addressed process issues, the identification of Parties and Participants, the identification of issues for adjudication at the hearing, the preparation of a draft Procedural Order and Issues List, and opportunities for settlement discussions.

Process Issues

[3] It was brought to the Tribunal’s attention that the Regional Municipality of Waterloo (“Region”) received short notice of the CMC. It was also informed that several individuals who reside in the vicinity of the subject property may not have received notice. In addition, it was found that notice of only 29 days was provided to those who were served.

[4] The Parties consented to, and the Tribunal directed, the continuation of the CMC with abridged notice of 29 days. The Tribunal directed that a second CMC will be held

for which further notice will be given. The Parties agreed to circulate and review the City's list of property owners and residents in the vicinity of the subject property entitled to notice and to identify any individuals who did not properly receive any notice of the CMC. The Tribunal directed that the Parties submit forthwith a list of those persons to the Tribunal's Case Coordinator and the Tribunal will then provide directions through the Case Coordinator on the service of notice of the second CMC. At the second CMC, the Tribunal will entertain any further requests for Party or Participant status.

Requests for Status at the CMC

[5] At the CMC, the Tribunal received requests for Party status from the Region, Hal Jaeger and Aaron Scriver.

[6] The Region stated that the subject property is located within its jurisdiction and that the Region is a commenting authority for the proposed instruments. None of the Parties objected to the Region having Party status, and the Tribunal granted it status as requested.

[7] The Friends of Olde Berlin Town ("Friends") also requested Party status. It is an unincorporated neighbourhood association comprised mostly of residents who live in the vicinity of the subject property. It set out adverse impact, affordability, transition, compatibility, heritage conservation, environmental and process issues that it wishes to raise at the hearing. As the Friends is not a corporate entity, Hal Jaeger and Aaron Scriver, requested Party status in its place. They are members of the Friends. They reside in close proximity to the subject property and have the same concerns and issues as the Friends regarding the proposed instruments. They stated that steps would likely be taken to have the Friends incorporated. They would then seek to be replaced by the Friends as a Party after incorporation is completed. Based on their proposed issues, none of the Parties objected to the granting of Party status to Mr. Jaeger and Mr. Scriver. The Tribunal granted them status as requested.

[8] Several individuals requested Participant status. They expressed concerns including heritage conservation, compatibility, building height, shadowing and other related issues. None of the Parties objected to any of these requests for Participant status. The Tribunal granted Participant status to:

- Daniel Ariza
- Neil Baarda
- Ilona Bodendorfer
- Richard Buck
- Taijwant (Tony) Geer
- Cathryn Harris
- Bob Jansen
- Adam Joncas
- Donna Kuehl
- North Waterloo Region Branch of Architectural Conservancy Ontario
- Gail Pool

[9] The Tribunal notes that a number of written requests for Participant status were filed with the Tribunal, but not provided to the Appellant. These requests were made by Maaïke Asselbergs, Roy Cameron, Simon Euteneier, and Monica Weber. Copies of these written requests for status will be forwarded to the Parties and will be considered at the second CMC.

Identification of Issues and the Preparation of a draft Procedural Order and Issues List

[10] Mr. Jaeger and Mr. Scriver stated that they have prepared a draft Issues List. The City and the Region indicated that they have not yet identified issues for adjudication. The Parties agreed to work together to prepare a draft Procedural Order and Issues List to be considered at the second CMC.

Opportunities for Settlement Discussion

[11] The Parties expressed an interest in pursuing settlement discussions and possibly Tribunal-assisted mediation. They agreed to have discussions prior to the second CMC on a pathway forward for settlement discussions and possibly mediation.

Scheduling of a further CMC and other Items

[12] As noted above, the Parties agreed to the holding of a second CMC. The Tribunal scheduled it for early October 2021.

[13] Mr. Jaeger and Mr. Scriver expressed interest in having the City hold a public meeting to address the proposed official plan and zoning by-law amendment applications. If such a meeting is to be held, the Tribunal recommends that it be held before the second CMC so that any individuals at the public meeting who decide to seek status in this proceeding have an opportunity to do so at the second CMC.

ORDER

[14] The Tribunal orders that the Region, Mr. Jaeger and Mr. Scriver are Parties in this proceeding.

[15] The Tribunal orders that the individuals listed in paragraph [8] above are Participants in this proceeding.

[16] The Tribunal directs that the Parties create a list of any persons who were entitled to, but did not receive, notice of the CMC and to submit the list to the Tribunal's Case Coordinator forthwith. Directions from the Tribunal on the service of notice of the second CMC will then be provided.

[17] The Tribunal directs that the Parties file a draft Procedural Order and Issues List with the Tribunal by no later than **Monday, October 4, 2021**.

[18] The Tribunal orders that a further CMC will be held by video hearing on **Tuesday, October 5, 2021** commencing at **10 a.m.** At this CMC, the Tribunal will entertain any further requests for Party or Participant status, review and finalize a draft Procedural Order and Issues List, and set hearing dates, if possible.

[19] Parties and participants are asked to log into the video hearing at least **15 minutes** before the start of the event to test their video and audio connections:

<https://global.gotomeeting.com/join/326164837>

Access code: 326 164 837

[20] Parties and participants are asked to access and set up the application well in advance of the event to avoid unnecessary delay. The desktop application can be downloaded at [GoToMeeting](#) or a web application is available:

<https://app.gotomeeting.com/home.html>.

[21] Persons who experience technical difficulties accessing the GoToMeeting application or who only wish to listen to the event can connect to the event by calling into an audio-only telephone line: (Toll Free): [1 888 299 1889](tel:18882991889) or [+1 \(647\) 497-9373](tel:+16474979373). The access code is **326 164 837**.

[22] Individuals are directed to connect to the event on the assigned date at the correct time. It is the responsibility of the persons participating in the hearing by video to ensure that they are properly connected to the event at the correct time. Questions

prior to the hearing event may be directed to the Tribunal's Case Coordinator having carriage of this case.

[23] This Member is not seized.

"Hugh S. Wilkins"

HUGH S. WILKINS
MEMBER

Ontario Land Tribunal

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