

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: November 29, 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)

Heard: October 5, 2021 by video hearing

APPEARANCES:

Parties

Counsel

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
OCTOBER 5, 2021 AND ORDER OF THE TRIBUNAL**

[1] This Decision arises from a Case Management Conference (“CMC”) held on October 5, 2021 regarding the appeals filed by 30 Duke Street Limited (“Appellant”) of 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] It was the second CMC in this proceeding. At the CMC, the Tribunal addressed process issues, the identification of Participants, the identification of issues, the preparation of a draft Procedural Order, opportunities for settlement discussions, and the scheduling of both a further CMC and the hearing.

Process Issues

[3] At the initial CMC, held on June 23, 2021, the Tribunal was informed that several individuals who reside in the vicinity of the subject property may not have received proper notice of that CMC. The Tribunal directed that the Parties file a list of those persons who were entitled to, but were not provided, notice of the first CMC and directed that they be served with notice of the second CMC. This would provide them opportunities to request status, if they wished.

[4] At the second CMC, the Appellant filed a further Affidavit of Service of Notice of CMC. It informed the Tribunal that all persons who were entitled to notice, but were not initially given proper notice of the first CMC, had now been properly served with notice of the second CMC. The Tribunal marked the Affidavit of Service as Exhibit 3 in the Tribunal record for this proceeding.

Requests for Participant Status

[5] At the initial CMC in this proceeding, the Tribunal granted Participant status to 11 individuals. At the second CMC, the Tribunal considered nine additional requests for Participant status. These were made by:

- Maaïke Asselberg
- Roy Cameron
- Peter Eglin
- Simon Euteneier
- Sally Gunz
- John Ryrie
- Social Development Centre Waterloo Region
- Trudy Wagner
- Monica Weber

[6] These individuals raised concerns, including heritage conservation, affordable housing, compatibility, building height, shadowing, and other related issues. None of the Parties objected to these requests for Participant status and the Tribunal granted them, as requested.

[7] No requests for Party status were made at the second CMC.

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

[8] At the second CMC, the Appellant stated that the Parties had prepared draft issues lists. The Parties undertook to consolidate them and file with the Tribunal a finalized list along with a draft Procedural Order. To date, finalized versions of these documents have not yet been filed with Tribunal.

Opportunities for Settlement Discussions

[9] At the second CMC, the Parties continued to express an interest in pursuing settlement discussions and possibly Tribunal-assisted mediation. The Tribunal encouraged the Parties to engage in such discussions and to request Tribunal-assisted mediation, if needed.

Scheduling of a further CMC and Hearing Dates

[10] The Parties requested the scheduling of a further CMC to address any further requests for Participant status, settlement discussion opportunities, and the possible need for motions. A final Procedural Order and Issues List will also be determined at the CMC. The Tribunal scheduled the CMC for early December 2021.

[11] The Parties also requested that the Tribunal schedule a 20-day hearing for the appeal. They identified the witnesses that they propose to call and the time that they estimate that each will need. The Tribunal scheduled the hearing to commence in late August 2022.

ORDER

[12] The Tribunal orders that the individuals listed in paragraph [5] above are Participants in this proceeding.

[13] The Tribunal orders that a further CMC will be held by video hearing on **Friday, December 3, 2021** commencing at **10 a.m.** At this CMC, the Tribunal will entertain any further requests for Participant status, settlement discussion opportunities, and the possible need for motions and it will finalize the Procedural Order and Issues List.

GoTo Meeting: <https://global.gotomeeting.com/join/447352581>
Audio-only telephone line: Toll-Free 1-888-455-1389 or +1 (647) 497-9391
Access Code: 447-352-581

[14] The Tribunal orders that the hearing in this matter will commence by video hearing on **Monday, August 29, 2022 at 10 a.m.** Twenty days have been set aside.

GoTo Meeting: <https://global.gotomeeting.com/join/862056077>
Audio-only telephone line: Toll-Free 1-888-455-1389 or +1 (647) 497-9391
Access Code: 862-056-077

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

[16] Parties and Participants are asked to set up the video hearing application well in advance of the events to avoid unnecessary delay. The desktop application can be downloaded at [GoToMeeting](#) or a web application is available: <https://app.gotomeeting.com/home.html>.

[17] 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. The **Access Code** is **as indicated above**.

[18] Individuals are directed to connect to the events on the assigned dates at the correct time. It is the responsibility of the persons participating in the CMC and hearing by video to ensure that they are properly connected to the events at the correct time. Questions prior to the hearing events may be directed to the Tribunal's Case Coordinator having carriage of this case.

[19] There will be no further notice.

[20] This Member is not seized.

“Hugh S. Wilkins”

HUGH S. WILKINS
MEMBER

Ontario Land Tribunal

Website: www.olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

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.