



Ontario Land Tribunal

655 Bay Street, Suite 1500, Toronto, ON M5G 1E5
Tel: 416-212-6349 | 1-866-448-2248
Web Site: olt.gov.on.ca

ISSUE DATE:

OLT Case No. PL210104

Local Planning Appeal Tribunal

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:
Subject:

30 Duke Street Limited
Failure of the City of Kitchener to announce a decision respecting Proposed Official Plan Amendment No. OPA 20/005W/JVW

Municipality:
OLT Case No.:
OLT File No.:
OLT Case Name:

City of Kitchener
PL210104
PL210104
30 Duke Street Limited vs. Kitchener (City)

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

Applicant and Appellant:
Subject:

30 Duke Street Limited
Application to amend Zoning By-law No. 85-1 - Refusal or neglect of the City of Kitchener to make a decision

Existing Zoning:
Proposed Zoning:
Purpose:
Property Address/Description:
Municipality:
Municipality File No.:
OLT Case No.:
OLT File No.:

Commercial Residential Three Zone
Site Specific (To be determined)
To permit a 15 storey residential building
22 Weber Street W.
City of Kitchener
20/013/W/JVW
PL210104
PL210105

1. The Tribunal may vary or add to the directions in this procedural order at any time by an oral ruling or by another written order, either on the parties' request or its own motion.

Organization of the Hearing

2. The video hearing will begin on **August 29, 2022** at 10:00 a.m. through video link **[Link]**. When prompted, enter the code **[Code]**.
3. A further case management conference or telephone conference event may be scheduled if a party or the Tribunal wishes to convert the hearing to an in-person event.

Any request for a further case management conference shall be made on or before 75 days prior to the scheduled video hearing.

4. The parties' initial estimation for the length of the hearing is **20** days. The parties are expected to cooperate to reduce the length of the hearing by eliminating redundant evidence and attempting to reach settlements on issues where possible.
5. The parties and participants identified at the case management conference are set out in Attachment 1.
6. The issues are set out in the Issues List attached as Attachment 2. There will be no changes to this list unless the Tribunal permits, and a party who asks for changes may have costs awarded against it.
7. The order of evidence shall be as set out in Attachment 3 to this Order. The Tribunal may limit the amount of time allocated for opening statements, evidence in chief (including the qualification of witnesses), cross-examination, evidence in reply and final argument. The length of written argument, if any, may be limited either on the parties' consent, subject to the Tribunal's approval, or by Order of the Tribunal.
8. Any person intending to participate in the hearing should provide a mailing address, email address and a telephone number to the Tribunal as soon as possible – ideally before the case management conference. Any person who will be retaining a representative should advise the other parties and the Tribunal of the representative's name, address, email address and the phone number as soon as possible.
9. Any person who intends to participate in the hearing, including parties, counsel and witnesses, is expected to review the Tribunal's [Video Hearing Guide](#), available on the Tribunal's website.

Requirements Before the Hearing

10. If the Applicant intends to seek approval of a revised proposal at the hearing, the Applicant shall provide copies of the revised proposal, including all revised plans, drawings, proposed instruments, updated supporting documents and reports, to the other parties no later than **February 28, 2022**. The Applicant acknowledges that any revisions to the proposal after that date without the consent of the parties may be grounds for a request to adjourn the hearing.
11. A party who intends to call witnesses, whether by summons or not, shall provide to the Tribunal and the other parties a list of the witnesses and the order in which they will be called. This list must be delivered on or before **May 2, 2022** and in accordance with paragraph 23 below. A party who intends to call an expert witness must include a copy

of the witness' Curriculum Vitae and the area of expertise in which the witness is prepared to be qualified.

12. Expert witnesses in the same field shall have a meeting on or before **May 27, 2022** and use best efforts to try to resolve or reduce the issues for the hearing. Following the experts' meeting the parties must prepare and file a Statement of Agreed Facts and Issues with the Tribunal case co-ordinator on or before **August 12, 2022**.
13. An expert witness shall prepare an expert witness statement, which shall list any reports prepared by the expert, or any other reports or documents to be relied on at the hearing. Copies of this must be provided as in paragraph 15 below. Instead of a witness statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Tribunal may refuse to hear the expert's testimony.
14. Expert witnesses who are under summons but not paid to produce a report do not have to file an expert witness statement; but the party calling them must file a brief outline of the expert's evidence as in paragraph 15 below. A party who intends to call a witness who is not an expert must file a brief outline of the witness' evidence, as in paragraph 15 below.
15. On or before **June 24 2022**, the parties shall provide copies of their witness and expert witness statements to the other parties and to the Tribunal case co-ordinator and in accordance with paragraph 23 below.
16. On or before **June 24, 2022**, a participant shall provide copies of their written participant statement to the other parties in accordance with paragraph 23 below. A participant cannot present oral submissions at the hearing on the content of their written statement, unless ordered by the Tribunal.
17. On or before **August 12, 2022**, the parties shall provide copies of their visual evidence to all of the other parties in accordance with paragraph 23 below. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.
18. On or before **July 29, 2022**, the parties shall provide copies of their reply witness statements and expert's reply witness statements to the other parties and to the Tribunal case co-ordinator and in accordance with paragraph 23 below.
19. The parties shall cooperate to prepare a joint document book which shall be shared with the Tribunal case co-ordinator on or before **August 19, 2022**.
20. A person wishing to change written evidence, including witness statements, must make a written motion to the Tribunal. *See Rule 10 of the Tribunal's Rules with respect*

to Motions, which requires that the moving party provide copies of the motion to all other parties 15 days before the Tribunal hears the motion.

21. A party who provides written evidence of a witness to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the Tribunal at least 7 days before the hearing that the written evidence is not part of their record.
22. The parties shall prepare and file a preliminary [hearing plan](#) with the Tribunal on or before **August 19, 2022** with a proposed schedule for the hearing that identifies, as a minimum, the parties participating in the hearing, the preliminary matters (if any to be addressed), the anticipated order of evidence, the date each witness is expected to attend, the anticipated length of time for evidence to be presented by each witness in chief, cross-examination and re-examination (if any) and the expected length of time for final submissions. The parties are expected to ensure that the hearing proceeds in an efficient manner and in accordance with the hearing plan. The Tribunal may, at its discretion, change or alter the hearing plan at any time in the course of the hearing.
23. All filings shall be submitted electronically. Electronic copies may be filed by email, an electronic file sharing service for documents that exceed 10MB in size, or as otherwise directed by the Tribunal. The delivery of documents by email shall be governed by the *Rule 7*.
24. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Tribunal's Rule 17 applies to such requests.

This Member is [not] seized.

So orders the Tribunal.

BEFORE:

Name of Member:

Date:

TRIBUNAL REGISTRAR

Attachment to Sample Procedural Order

Meaning of terms used in the Procedural Order:

A **party** is an individual or corporation permitted by the Tribunal to participate fully in the hearing by receiving copies of written evidence, presenting witnesses, cross-examining the witnesses of the other parties, and making submissions on all of the evidence. An **unincorporated group** cannot be a party and it must appoint one person to speak for it, and that person must accept the other responsibilities of a party as set out in the Order. Parties do not have to be represented by a lawyer and may have an agent speak for them. The agent must have written authorisation from the party.

NOTE that a person who wishes to become a party before or at the hearing, and who did not request this at the case management conference (CMC), must ask the Tribunal to permit this.

A **participant** is an individual or corporation, whether represented by a lawyer or not, who may make a written submission to the Tribunal. A participant cannot make an oral submission to the Tribunal or present oral evidence (testify in-person) at the hearing (only a party may do so). Section 17 of the Ontario Land Tribunal Act states that a person who is not a party to a proceeding may only make a submission to the Tribunal in writing. The Tribunal may direct a participant to attend a hearing to answer questions from the Tribunal on the content of their written submission, should that be found necessary by the Tribunal. A participant may also be asked questions by the parties should the Tribunal direct a participant to attend a hearing to answer questions on the content of their written submission.

A participant must be identified and be accorded participant status by the Tribunal at the CMC. A participant will not receive notice of conference calls on procedural issues that may be scheduled prior to the hearing, nor receive notice of mediation. A participant cannot ask for costs, or review of a decision, as a participant does not have the rights of a party to make such requests of the Tribunal.

Written evidence includes all written material, reports, studies, documents, letters and witness statements which a party or participant intends to present as evidence at the hearing. These must have pages numbered consecutively throughout the entire document, even if there are tabs or dividers in the material.

Visual evidence includes photographs, maps, videos, models, and overlays which a party or participant intends to present as evidence at the hearing.

A **witness statement** is a short written outline of the person's background, experience and interest in the matter; a list of the issues which he or she will discuss ; and a list of reports or materials that the witness will rely on at the hearing.

An **expert witness statement** should include his or her (1) name and address, (2) qualifications, (3) a list of the issues he or she will address, (4) the witness' opinions on those issues and the complete reasons supporting their opinions and conclusions and (5)

a list of reports or materials that the witness will rely on at the hearing. An expert witness statement must be accompanied by an acknowledgement of expert's duty.

*A **participant statement** is a short written outline of the person's or group's background, experience and interest in the matter; a statement of the participant's position on the appeal; a list of the issues which the participant wishes to address and the submissions of the participant on those issues; and a list of reports or materials, if any, which the participant wishes to refer to in their statement.*

Additional Information

*A **summons** may compel the appearance of a person before the Tribunal who has not agreed to appear as a witness. A party must ask a Tribunal Member or the senior staff of the Tribunal to issue a summons through a request. (See [Rule 13](#) on the summons procedure.) The request should indicate how the witness' evidence is relevant to the hearing. If the Tribunal is not satisfied from the information provided in the request that the evidence is relevant, necessary or admissible, the party requesting the summons may provide a further request with more detail or bring a motion in accordance with the Rules.*

*The **order of examination of witnesses** is usually direct examination, cross-examination and re-examination in the following way:*

- *direct examination by the party presenting the witness;*
- *direct examination by any party of similar interest, in the manner determined by the Tribunal;*
- *cross-examination by parties of opposite interest;*
- *re-examination by the party presenting the witness; or*
- *another order of examination mutually agreed among the parties or directed by the Tribunal.*

ATTACHMENT 1

PARTIES & PARTICIPANTS

Parties

1. **30 Duke Street Limited**

Turkstra Mazza Associates
15 Bold Street
Hamilton, ON L8P 1T3

Jennifer Meader
Tel: 905.529.3476
Email: jmeader@tmalaw.ca

2. **City of Kitchener**

200 King Street West, 4th Floor
Kitchener, ON N2G 4G7

Lesley MacDonald
Tel: 519.741.2200 ext. 7267
Email: Lesley.MacDonald@kitchener.ca

3. **Region of Waterloo**

150 Frederick Street, 3rd Floor
Kitchener, ON N2G 4J3

Fiona McCrea
Tel: 519.575.4518
Email: fmccrea@regionofwaterloo.ca

4. **Friends of Olde Berlin Town**

55 Margaret Avenue
Kitchener, ON N2H 4H3

Hal Jaeger
Tel: 519.341.6007
Email: obtfriends@gmail.com

Participants

1. Daniel Ariza	9. Gail Pool	17. Monica Weber
2. Neil Baarda	10. North Waterloo Region Branch of Architectural Conservancy Ontario	18. Social Development Centre of Waterloo Region
3. Ilona Bodendorfer	11. Donna Kuehl	19. John Ryrie
4. Richard Buck	12. Peter Eglin	20. Kathryn Forler
5. Taijwant (Tony) Greer	13. Trudy Wagner	21. Maaike Asselberg
6. Cathryn Harris	14. Simon Euteneier	
7. Bob Janzen	15. Sally Gunz	
8. Adam Joncas	16. Roy Cameron	

ATTACHMENT 2

ISSUES LIST

Note: The identification of an issue does not mean that all parties agree that such issue, or the manner in which the issue is expressed, is appropriate or relevant to the determination of the Tribunal at the hearing. The extent to which the issues are appropriate, within the jurisdiction of the OLT, or relevant to the determination at the hearing will be a matter of evidence and argument at the hearing.

	Matters of Provincial Interest (Section 2 of Planning Act)	Party
1	Do the proposed Official Plan and Zoning By-law amendment applications (the “proposed applications”) have sufficient regard to the matters of provincial interest listed in section 2(d), (n), (p) and (r)?	FOBT
	Provincial Policy Statement	
2	Are the proposed Official Plan Amendment and Zoning By-law Amendment applications (the proposed applications) consistent with the PPS, including but not limited to, policies 1.1.3.2, 1.1.3.3, 1.1.3.4, 2.6 and 4.6?	City FOBT
	Growth Plan for the Greater Golden Horseshoe	
3	Do the proposed applications conform to the Growth Plan, including but not limited to, Guiding Principle 1.2.1, and policies in sections 2.2.2, 2.2.4, 2.2.6, 4.1, and 4.2.7?	City FOBT
	Region of Waterloo Official Plan	
4	Do the proposed applications conform to the Region of Waterloo Official Objective 3.8?	FOBT

5	Do the proposed applications conform to the Urban Area Development policies in chapter 2.D (2.D.1, 2.D.2, 2.D.6, 2.D.10)?	City FOBT
6	Do the proposed applications conform to the Liveability in Waterloo Region policies in chapter 3 (3.A, 3.B, 3.C, 3.G.1, 3.G.6)?	City FOBT
7	Do the proposed Official Plan Amendment and proposed Zoning By-law Amendment conform to the Regional Official Plan, including Sections 2.G.10, 2.G.13, 2.G.14, 2.G.15, 2.G.16 and 3.G.9?	Region
	City of Kitchener Official Plan	
8	Do the proposed applications conform to the Urban Structure policies in Part C (3.C.2.9, 3.C.2.10, 3.C.2.17, 3.C.2.20, and 3.C.2.22)?	City FOBT
9	Do the proposed applications conform to the Housing policies in Section 4 (4.C.1.7, 4.C.1.8, 4.C.1.9, 4.C.1.13, and 4.C.1.19)?	City FOBT
10	Do the proposed applications conform to the Private Greenspace and Facilities policies in Section 8 (8.C.1.21 and 8.C.1.23)?	City FOBT
11	Do the proposed applications conform to the Urban Design objectives in Section 11 (11.1.1 through 11.1.8)?	City FOBT
12	Do the proposed applications conform to the Urban Design policies in Section 11 (11.C.1.4, 11.C.1.11, 11.C.1.12, 11.C.1.21, 11.C.1.29, 11.C.1.30, 11.C.1.31, 11.C.1.32, and 11.C.1.33).	City FOBT

13	Do the proposed applications conform to the Cultural Heritage Resources objectives in Section 12 (12.1.2)?	City FOBT
14	Do the proposed applications conform to the Cultural Heritage Resources policies in Section 12 (12.C.1.1, 12.C.1.10, 12.C.1.14, 12.C.1.19, 12.C.1.21, 12.C.1.23, 12.C.1.26, and 12.C.1.27)?	City FOBT
15	Do the proposed applications conform to the Active Transportation objectives in Section 13 (13.1.1, 13.1.3, and 13.1.7)?	City
16	Do the proposed applications conform to the Transportation policies in Section 13 (13.C.1.4.d, 13.C.1.6, 13.C.1.13, 13.C.3.12, 13.C.7.3, 13.C.7.4, 13.C.8.2, and 13.C.8.4)?	City
17	Do the proposed applications conform to the City of Kitchener Official Plan objective 3.2.5?	FOBT
City of Kitchener Civic Centre Secondary Plan		
18	Do the proposed applications conform to the General Policies in Section 13.1.1 (13.1.1.1, and 13.1.1.7)?	City FOBT
19	Do the proposed applications conform to the Land Use Designation policies in Section 13.1.2 (13.1.2.8)?	City FOBT
Kitchener Zoning By-law		
20	Are the proposed on-site required and visitor vehicle parking rates, appropriate for the scale, proposed use, and number of dwelling units proposed with the development?	City
21	Are the proposed on-site secured and visitor bicycle parking rates appropriate for the scale, proposed use, and number of dwelling units proposed with the development?	City

22	Do the requested site specific zoning regulations address compatibility between the proposed development, the existing community, and the planned function of the immediate area, including: adequate setbacks from existing low density uses, maximum building heights and step backs regulations to regulate built form, setbacks for surface parking facilities from the public realm, as well as setbacks and step backs from other properties?	City FOBT
	Kitchener Urban Design Manual	
23	What weight should be given to the Kitchener Urban Design Manual?	Applicant
24	Does the proposed development complement adjacent built form through compatible height, scale, massing, and materials?	City FOBT
25	Does the base of the proposed development meet the built form guidelines for a Tall Building?	City FOBT
26	Does the proposed development achieve sufficient transition to the adjacent existing and planned built form of the adjacent properties? Is there a suitable transition in scale, massing, building height, building length and intensity through setbacks, step backs, landscaping, and compatible architectural design/material selection?	City FOBT
27	Does the proposed development meet the tower separation guidelines for a Tall Building?	City FOBT
28	Does the proposed development exceed the target overlook guidelines for a Tall Building?	City

29	Does the proposed development provide a sufficient step back from the base to mitigate the potential wind impact on the public realm?	City
30	Does the proposed development include a sufficient shared outdoor amenity area?	City FOBT
31	Is the proposed building height compatible and aligned with adjacent neighbouring properties?	City FOBT
32	Does the proposed development appropriately mitigate the unwanted microclimate impact on surrounding properties, such as wind and shadow impacts?	City FOBT
33	Do the proposed applications respect the Major Transit Station Area guidelines, including but not limited to the following guidelines? a) Compatibility (section 02.2.6, p. 5, items 2 and 4) b) Cultural and Natural Heritage (section 02.2.7, p. 5, item 1) c) Built Form (section 02.3.1, p. 6, items 2 and 4) d) PARTS Central (section 02.4.2, p. 12, item 7)	FOBT
34	Do the proposed applications respect the Tall Buildings guidelines, including but not limited to the following guidelines? a) Relative Height, For towers adjacent to low-rise surrounding areas (p. 6) b) Compatibility (p. 15) c) Heritage, When a tall building is adjacent to a built heritage resource (p. 16, items 1, 3 and 4)	FOBT
35	Do the proposed applications respect the City-Wide guidelines, including but not limited to the following guidelines? a) Focal Points & Gateways (section 01.2.5, p. 15, item 4), b) Cultural & Natural Heritage (section 01.2.8, p. 18, item 7) c) Built Form (section 01.3.1, p. 19, item 9) d) Site Function (section 01.3.3, p. 23, items 8 and 9)	FOBT

Civic Centre Neighbourhood, Heritage Conservation District Plan (HCD Plan)		
36	Are the proposed applications consistent with the Heritage District Objective, Principles, and Policies in the HCD Plan (Section 3.1, 3.2, 3.3.3, and 3.3.5.2, Recommendation 4.2.1 on “High Density Commercial Residential Designation” and Bullets 2 and 7 of Guideline 6.9.4)?	City FOBT
37	Are the proposed applications consistent with the Architectural Design Guidelines in the HCD Plan (Section 6.6 and 6.9.4)?	City FOBT
38	Does the proposed development provide a 45 degree angular plane measured from the rear property line to provide transition in scale from proposed development down to adjacent lands?	City FOBT
Change to Applications		
39	The proposed applications submitted to the City of Kitchener were for a 15 storey proposed development. In their appeal, the Appellant requested an increase to 19 storeys for which the City of Kitchener has not received any revised submissions. The proposed applications received and reviewed by the City of Kitchener and the Region of Waterloo, and before the OLT, are for a 15 storey building. The City and Region have not undertaken any evaluation of the potential impacts of a 19 storey proposed development.	City Region
Other		
40	What weight, if any, should be given to: a) the policies proposed for the Civic Centre Secondary Plan via the Secondary Plan Review, including but not limited to policies 16.D.2.2, 16.D.9.4, 16.D.9.6 and 16.D.9.9; b) the review of the Region of Waterloo Official Plan; and c) The PARTS Central Plan?	FOBT Applicant

41	Do the proposed applications represent good planning and are they in the public interest?	FOBT

DRAFT

ATTACHMENT 3

ORDER OF EVIDENCE

1. 30 Duke Street Limited
2. Friends of Olde Berlin Town
3. City of Kitchener
4. Region of Waterloo
5. 30 Duke Street Limited in reply

DRAFT

ATTACHMENT 4

SUMMARY OF FILING DATES

EVENT	DATE
Revised Applications	February 28, 2022
List of Witnesses	May 2, 2022
Expert Witness Meetings	May 27, 2022
Participant Statements	June 24, 2022
Witness and Expert Witness Statements	June 24, 2022
Reply Witness Statements	July 29, 2022
Agreed Statement of Facts & Remaining Issues	August 12, 2022
Visual Evidence	August 12, 2022
Hearing Plan	August 19, 2022
Joint Document Book	August 19, 2022
LPAT Hearing Commences	August 29, 2022