

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: April 08, 2022

CASE NO(S):

OLT-22-002377

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.: OLT-22-002377
Legacy Case No.: PL210104
OLT File No.: OLT-22-002377
Legacy File No.: PL210104
LPAT Case Name: 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: 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 W.
Municipality: City of Kitchener
Municipality File No.: 20/013/W/JVW
LPAT Case No.: PL210104
LPAT File No.: PL210105

Heard: April 4, 2022 by video hearing by ("VH")

APPEARANCES:

Parties

Counsel/Representative*

30 Duke Street Limited ("Applicant")	J. Meader
City of Kitchener ("City")	K. Hughes
Region of Waterloo ("Region")	F. McCrae
Friends of Olde Berlin Town ("Friends")	H. Jaeger*

MEMORANDUM OF ORAL DECISION DELIVERED BY BLAIR S. TAYLOR ON APRIL 4, 2022 AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] The Tribunal held its fourth Case Management Conference ("CMC") with regard to this matter.

[2] The Applicant, in an abundance of caution arising from the recent Divisional Court decision (*City of Toronto v. 445 Adelaide Street West Inc.* 2022 ONSC 1471), requested the adjournment of the 20 day hearing set to commence on **Monday, August 29, 2022**, to enable it to file a heritage permit with the City, to set a further CMC to finalize a revised draft Procedural Order ("PO"), and set a new hearing date for 2023.

[3] With the consent of the parties, the Tribunal adjourned the hearing on the merits set to commence on **Monday, August 29, 2022**, set the date of **Friday, September 30, 2022**, for the fifth CMC, and set a 20 day hearing to commence on **Monday, March 13, 2023**, all for the reasons set out below.

DECISION

[4] In the lead up to this CMC, the Applicant had filed its new plans with the City, and had circulated a revised draft PO (Exhibit 1).

[5] However, in the interim, the Divisional Court released its decision in the

aforementioned City of Toronto v. 445 Adelaide Street West Inc. case where the Divisional Court found that the Tribunal did not have jurisdiction to deal with a land use planning matter when a heritage permit application had not been filed.

[6] As the lands relevant to this hearing fall within a heritage conservation district, the Applicant advised the Tribunal that it intended to file its heritage application permit by the end of **April 2022**, and thereafter the City would have a 90 day window to deal with the application. This application process and timing would not enable the parties to complete the requirements of the draft PO in time for the hearing set for **Monday, August 29, 2022**.

[7] Thus, the request by counsel for the Applicant was to adjourn the hearing set for **Monday, August 29, 2022**, set another CMC for **Friday, September 30, 2022** and set a new 20 day hearing for early **2023**.

[8] The other parties were canvassed and in light of the new heritage permit application and timing for processing, all agreed with the recommendations by counsel for the Applicant.

[9] Hence the Tribunal adjourned the **Monday, August 29, 2022**, hearing.

CMC

[10] The Tribunal set a fifth CMC for **Friday, September 30, 2022**, commencing at **10 a.m.** by VH.

[11] The Tribunal will at that time hear a status update from the parties, and may hear a request to consolidate the anticipated heritage permit appeal with this matter.

[12] 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/687587165>

Access code: 687-587-165

[13] 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](https://global.gotomeeting.com/join/687587165) or a web application is available:

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

[14] 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: **(647) 497-9373 or Toll Free 1-888-299-1889**. The access code is **687-587-165**.

[15] 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.

[16] There will be no further notice of the CMC

[17] I am not seized of the CMC.

NEW HEARING

[18] The Tribunal also set a new 20 day hearing for **Monday, March 13, 2023**, commencing at **10 a.m.** by VH.

[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/719383509>

Access code: 719-383-509

[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](https://app.gotomeeting.com/home.html) 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: **(647) 497-9373 or Toll Free 1-888-299-1889**. The access code is **719-383-509**.

[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] There will be no further notice of the hearing.

[24] I am not seized of the hearing.

NEW PARTICIPANT

[25] The Tribunal on consent of all the parties granted participant status to Neil Jensen.

DRAFT ("PO")

[26] The Tribunal had before it a draft PO (Exhibit 1) which had anticipated the 20 day hearing commencing on **Monday, August 29, 2020**.

[27] The draft PO will require significant revision with regard to the dates and timing for the exchange of witness statements etc., and possibly new or perhaps refined issues.

[28] The Tribunal's hearing schedule is a scarce public resource that must be carefully managed to optimize its availability to all, especially in these Covid times.

[29] Thus, the Tribunal directed that the proposed submission of the Hearing Plan (for the 20 day hearing on the merits) in paragraph 22 be increased from 10 days to 65 days so that any surplus hearing day or days that might arise for example from the settlement of issues, or the scoping of issues might be effectively used by the Tribunal.

[30] The Tribunal tasked the counsel for the Applicant to coordinate with the parties and prepare a revised draft PO and on consent forward it to the Case Coordinator on or before **Friday, September 23, 2022**, for review prior to the fifth CMC.

[31] This is the Order of the Tribunal.

"Blair S. Taylor"

BLAIR S. TAYLOR
MEMBER

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.