

Jennifer Meader

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VIA EMAIL & COURIER

August 24, 2022

Ontario Land Tribunal
655 Bay Street, Suite 1500
Toronto, ON M5G 1E5

Attention: Registrar's Office

Dear Sir/Madam:

**Re: NOTICE OF APPEAL
30 Duke Street Limited
Refusal of Heritage Permit Application by the City of Kitchener
Municipal File No. HPA-2022-V-015**

We represent 30 Duke Street Limited ("**30 Duke**"), in respect of the lands legally described as Part of Lot 5 and Plan 390 and municipally known as 22 Weber Street West, within the City of Kitchener ("**Subject Lands**"). On April 30, 2022, an application ("**Application**") for a heritage permit was submitted to the City of Kitchener ("**City**") to permit the construction of a 19-storey multiple residential building on the Subject Lands, which are located within the Civic Centre Neighbourhood Heritage Conservation District ("**CCNHCD**"). On August 22, 2022, City Council refused the Application.

The purpose of this letter is to appeal the City's refusal of the Application to the Ontario Land Tribunal ("**OLT**"), pursuant to subsection 42(6) of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18.

We note that this appeal relates to existing OLT Case No. OLT-22-002377, which is the appeal of the City's non-decision on an Official Plan Amendment and Zoning By-law Amendment that would facilitate the residential development ("**Planning Act Appeals**"). The hearing of the Planning Act Appeals was adjourned on consent of the parties to allow for the filing of the Application. A Case Management Conference ("**CMC**") for the Planning Act Appeals is scheduled for October 26, 2022. We ask that the first CMC with respect to the Application appeal be returnable to the October 26th CMC.

THE SUBJECT LANDS

The Subject Lands are an interior lot located on the north side of Weber Street West, between Young Street and Queen Street North. They are approximately 0.14 hectares in area, vacant of any buildings, and are currently being used as a commercial parking lot.

As noted, the Subject Lands are located within the CCNHCD and are designated under Part V of the *Ontario Heritage Act*. As such, any new development on the Subject Lands is subject to the policies of the Civic Centre Neighbourhood Heritage Conservation District Plan ("**CCNHCD Plan**"). The CCNHCD Plan

recognizes that this property is vacant and does not include any features which contribute to the character of the CCNHCD or the Weber Street West streetscape. It also recognizes that Weber Street is different from the interior of the district and sets forth policies for new development which are specific to this area.

The CCNHCD Plan recognizes that Weber Street West is designated High Density Commercial Residential and that higher density developments can be considered provided that it does not result in the demolition of significant cultural heritage resources and is compatible with the character of the streetscape. The High Density Commercial Residential designation permits a range of residential, commercial and retail uses within free standing buildings or mixed use buildings.

The Subject Lands back onto lots on the south side of Roy Street. The lands on the south side of Roy Street are designated Office Residential Conversion. The Office Residential Conversion designation permits a range of residential uses and office commercial uses including private home day care, home business, and hospice. The intent of the Office Residential Conversion designation is to provide a transition from the high density development on Weber Street to the low-rise residential uses located internal to the Civic Centre Neighbourhood.

THE DEVELOPMENT PROPOSAL

The development will have a gross floor area of approximately 10,855.5 square metres (11,6847.6 square feet) and 162 units, including 25 barrier free units. The proposed new building does not include the demolition or alteration of any cultural heritage resources located on-site or adjacent. The preliminary site plan is described as follows.

Ground Floor / Building Base

Indoor amenity, office and lobby space is proposed within the front half of the ground floor. Large windows are proposed facing Weber Street West and the ground floor has been designed at a height of 4.5 metres. The back half of the ground floor contains parking, bicycle storage and the internal stairwell.

The main building entrance is oriented to Weber Street West. The main entrance will connect directly with the public sidewalk system. A secondary entrance is located at the back of the building providing access to the building from the parking area.

The base of the building has been designed to be visually distinct from the floors above. This has been achieved through the use of different building materials and colours, the inclusion of large ground floor windows, and the provision of a setback above the base.

Amenity Space

Balconies are proposed for all residential units to provide private outdoor amenity. An interior amenity room is also proposed on the ground floor with large windows facing the street. Indoor secure bicycle parking will also be provided and will be contained within the ground floor storage area. Residents of the

building will also have access to all the amenities associated with living in the Civic Centre District and close to downtown. There are multiple parks within a ten-minute walk, including Victoria Park, a major outdoor recreation area.

Parking and Access

The development is proposed to have a mix of surface and structured parking on the ground floor. Where possible parking has been incorporated into the proposed building structure. A total of 24 parking spaces are proposed. Vehicular access to the site is proposed from Weber Street West (a regional road) which will direct vehicular traffic from the proposed development away from the local road network associated with the Civic Centre neighbourhood. Access is shared with the property to the east via existing reciprocal right-of-way easements. The existing parking lot has an additional vehicular access to Weber Street (serving as the exit from the parking lot) which will be closed to accommodate the proposed development. Pedestrian access to the building will connect to the public sidewalk system along Weber Street West. Indoor secure bicycle parking will also be provided.

Servicing and Infrastructure

Existing municipal water, sanitary and storm infrastructure is available along Weber Street West. The development will connect to the existing services.

REASONS FOR APPEAL

The Heritage Impact Assessment Report, prepared by MHBC, dated November, 2021 (“**HIA**”) demonstrates that Weber Street West is characterized by a range of architectural styles, materials, colours, setbacks, and buildings of a higher scale than that of the interior of the district. The proposed new 19-storey residential building is taller than adjacent buildings, but maximizes density while respecting adjacent cultural heritage resources. The proposed new building is contemporary in style and includes materials such as neutral toned masonry. The building includes a two-storey main entrance/podium which emphasizes the pedestrian scale. The contemporary design includes a symmetrical arrangement of square and rectangular shaped windows in a regularly established rhythm which will not detract from the buildings located adjacent at 18 Weber Street West and 28 Weber Street West.

The proposed development will not result in any adverse impacts related to obstruction, isolation, change in land use, or shadows. The proposed development is considered a neutral impact to adjacent heritage resources within the CCNHCD located along Weber Street West and Roy Street.

Monitoring of vibration impacts during construction is recommended to mitigate potential impacts of construction activities to adjacent buildings.

A detailed analysis of applicable policies is set out in the HIA which is attached to this Notice of Appeal. The Application furthers the objectives and conforms with the policies of the CCNHCD.

APPEAL PACKAGE

In satisfaction of OLT's processing requirements, enclosed please find:

1. OLT Appeal Form A1 for the Application; and
2. Heritage Impact Assessment Report, prepared by MHBC, dated November, 2021.

The OLT's appeal fee of \$1,100.00 will be paid via credit card. Please contact Victoria Peacock for payment at (905)529-3476 Ext. 2790 or at vpeacock@tmalaw.ca.

Should you have any questions or require any additional information, please do not hesitate to contact the undersigned. Otherwise, we thank you for your receipt of this appeal package.

Yours truly,



Jennifer Meader

c. Ben Bath



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

Appeal Form (A1)

**Municipal/Approval Authority
Date Stamp**

**Receipt Number
(OLT Office Use Only)**

**Date Stamp – Appeal Received
by OLT**

**OLT Case Number
(OLT Office Use Only)**

Please complete this Appeal Form by following the instructions in the companion document titled “Appeal Form Instructions”. Please read **both** documents carefully to ensure you submit the correct information and complete this form correctly.

There are guides available for review on the Tribunal’s [website](#) for different appeal types to assist you in filing an appeal.

Please review the notice of the decision you are appealing to determine the appeal deadline and the specific official with whom the appeal should be filed (e.g. Secretary-Treasurer, Clerk, Minister, Ontario Land Tribunal) prior to completing this Appeal Form. Relevant portions of the applicable legislation should also be reviewed before submitting this form. Your appeal must be filed with the appropriate authority within the appeal period as set out in the notice of the decision and applicable legislation.

Section 1 – Contact Information (Mandatory)

Applicant/Appellant/Objector/Claimant Information

Last Name:

First Name:

Company Name or Association Name (Association must be incorporated – include copy of letter of incorporation):

30 Duke Street Limited

Email Address:

Daytime Telephone Number:

Alternative Telephone Number:

ext.

Mailing Address

Unit Number:

Street Number:

Street Name:

P.O. Box:

City/Town:	Province:	Country:	Postal Code:

Representative Information			
X I hereby authorize the named company and/or individual(s) to represent me			
Last Name:		First Name:	
Meader		Jennifer	
Company Name or Association Name (Association must be incorporated – include copy of letter of incorporation):			
Turkstra Mazza Associates			
Email Address:			
jmeader@tmalaw.ca			
Daytime Telephone Number:		Alternative Telephone Number:	
(905) 529-3476	ext.	2740	
Mailing Address			
Unit Number:	Street Number:	Street Name:	P.O. Box:
	15	Bold Street	
City/Town:	Province:	Country:	Postal Code:
Hamilton	Ontario	Canada	L8P 1T3
<p>Note: If your representative is not licensed under the <i>Law Society Act</i>, please confirm that they have your written authorization, as required by the <i>OLT Rules of Practice and Procedure</i>, to act on your behalf and that they are also exempt under the Law Society's by-laws to provide legal services. Please confirm this by checking the box below.</p>			
<p><input type="checkbox"/> I certify that I understand that my representative is not licensed under the <i>Law Society Act</i> and I have provided my written authorization to my representative to act on my behalf with respect to this matter. I understand that my representative may be asked to produce this authorization at any time along with confirmation of their exemption under the Law Society's by-laws to provide legal services.</p>			

Location Information	
Are you the current owner of the subject property? X Yes <input type="checkbox"/> No	
Address and/or Legal Description of property subject to the appeal:	
22 Weber Street West, Kitchener, Ontario	
Municipality:	
City of Kitchener	
Upper Tier (Example: county, district, region):	
Region of Waterloo	

Language Requirements

Do you require services in French? Yes No

To file an appeal, please complete the section below. Complete one line for each appeal type

Subject of Appeal		Type of Appeal (Act/Legislation Name)	Reference (Section Number)
Example	Minor Variance	<i>Planning Act</i>	45(12)
1	Permit to erect a building or structure on property situated in a heritage conservation district	Ontario Heritage Act	42(6) & (7)
2			
3			
4			
5			

Section 2 – Appeal Type (Mandatory)

Please select the applicable type of matter

Select	Legislation associated with your matter	Complete Only the Section(s) Below
<input type="checkbox"/>	Appeal of <i>Planning Act</i> matters for Official Plans and amendments, Zoning By-Laws and amendments and Plans of Subdivision, Interim Control By-laws, Site Plans, Minor Variances, Consents and Severances	3A
<input type="checkbox"/>	Appeal of <i>Development Charges, Education Act, Aggregate Resources Act, Municipal Act</i> matters	3A
<input type="checkbox"/>	Appeal of or objection to <i>Ontario Heritage Act</i> matters under subsections 29, 30.1, 31, 32, 33, 40.1 and 41	3A
<input checked="" type="checkbox"/>	Appeal of <i>Planning Act</i> (subsections 33(4), 33(10), 33(15), 36(3)), <i>Municipal Act</i> (subsection 223(4)), <i>City of Toronto Act</i> (subsection 129(4)) and <i>Ontario Heritage Act</i> (subsections 34.1(1), 42(6)) matters	3A & 3B
<input type="checkbox"/>	Appeal of <i>Clean Water Act, Environmental Protection Act, Nutrient Management Act, Ontario Water Resources Act, Pesticides Act, Resource Recovery and Circular Economy Act, Safe Drinking Water Act, Toxics Reduction Act, and Waste Diversion Transition Act</i> matters	4A
<input type="checkbox"/>	Application for Leave to Appeal under the <i>Environmental Bill of Rights, 1993</i>	4B
<input type="checkbox"/>	Appeal under the <i>Niagara Escarpment Planning and Development Act (NEPDA)</i>	5

<input type="checkbox"/>	Appeal of <i>Conservation Authorities Act, Mining Act, Lakes and Rivers Improvement Act, Assessment Act, and Oil, Gas and Salt Resources Act</i> matters	6
<input type="checkbox"/>	Legislation not listed above	Contact OLT before filing your appeal

Section 3A – Planning Matters

Appeal Reasons and Specific Information

Number of new residential units proposed:

162

Municipal Reference Number(s):

HPA-2022-V-015

List the reasons for your appeal:

Please see covering letter.

Has a public meeting been held by the municipality? Yes No

For appeals of Official Plans, Official Plan Amendments, Zoning By-laws and Zoning By-law Amendments, please indicate if you will rely on one or more of the following grounds:

A: A decision of a Council or Approval Authority is:

- Inconsistent with the Provincial Policy Statement issued under subsection 3(1) of the *Planning Act*
- Fails to conform with or conflicts with a provincial plan
- Fails to conform with an applicable Official Plan

And

B: For a non-decision or decision to refuse by council:

- Consistency with the provincial policy statement, issued under subsection 3(1) of the *Planning Act*
- Conformity with a provincial plan
- Conformity with the upper-tier municipality's Official Plan or an applicable Official Plan

If it is your intention to argue one or more of the above grounds, please explain your reasons:

Oral/Written submissions to council

Did you make your opinions regarding this matter known to council?

- Oral submissions at a public meeting of council
- Written submissions to council
- Not applicable

Related Matters

Are there other appeals not yet filed with the Municipality?

- Yes No

Are there other matters related to this appeal? (For example: A consent application connected to a variance application).

- Yes No

If yes, please provide the Ontario Land Tribunal Case Number(s) and/or Municipal File Number(s) for the related matters:

OLT-22-002377 (OPA 20/005/W/JVW & ZBA 20/013/W/JVW)

Section 3B – Other Planning Matters

Appeal Specific Information (Continued)

Date application submitted to municipality if known (yyyy/mm/dd):

2022/04/30

Date municipality deemed the application complete if known (yyyy/mm/dd):

2022/06/28

Please briefly explain the proposal and describe the lands under appeal:

Please see covering letter.

There are required documents and materials to be submitted to the Ontario Land Tribunal (OLT) based on the type of legislation and section you are filing under. Please see the Section 3B Checklist(s) located here and submit all documents listed.

Section 4A – Appeals under Environmental Legislation

Appeal Specific Information

Outline the grounds for the appeal and the relief requested:

Reference Number of the decision under appeal:

Portions of the decision in dispute:

Date of receipt of Decision or Director's Order (yyyy/mm/dd):

Applying for Stay? Yes No

If Yes, outline the reasons for requesting a stay: (Tribunal's Guide to Stays can be viewed [here](#))

There are required documents and materials to be submitted to the Ontario Land Tribunal (OLT) based on the type of legislation and section you are filing under. Please see the [Section 4A Checklist\(s\)](#) located [here](#) and submit all documents listed on the checklist.

Section 4B – Environmental Application for Leave to Appeal

Are you filing an Application for Leave to Appeal under the *Environmental Bill of Rights, 1993*?

Yes No

Identify the portions of the instrument you are seeking to appeal:

Identify the grounds you are relying on for leave to appeal. Your grounds should include reasons why there is good reason to believe that no reasonable person, having regard to the relevant law and to any government policies developed to guide decisions of that kind could have made the decision; and why the decision could result in significant harm to the environment:

Outline the relief requested:

There are required documents and materials to be submitted to the Ontario Land Tribunal (OLT) based on the type of legislation and section you are filing under. Please see the [Section 4B Checklist\(s\)](#) located [here](#) and submit all documents listed on the checklist.

Section 5 – Appeal regarding Development Permit Application under the *Niagara Escarpment Planning and Development Act*

Appeal Specific Information

Development Permit Application File No:

Address or legal description of the subject property:

Reasons for Appeal: Outline the nature and reasons for your appeal. Specific planning, environmental and/or other reasons are required. (The Niagara Escarpment Plan is available on the Niagara Escarpment Commission's website (www.escarpment.org))

Section 6 – Mining Claim and Conservation Matters

Appeal Specific Information

List the subject Mining Claim Number(s) (for unpatented mining claims) and accompanying Townships, Areas and Mining Division(s) where mining claims are situated. List all "Filed Only" Mining Claims, if appropriate: (This is to be completed for *Mining Act* appeals only.)

List the Parcel and the Property Identifier Numbers (PIN), if rents or taxes apply to mining lands, if appropriate (mining claims only):

Provide the date of the Decision of the Conservation Authority or the Provincial Mining Recorder, as appropriate:

Provide a brief outline of the reasons for your application/appeal/review. If other lands/owners are affected, please include that information in the outline being provided below:

Respondent Information

Conservation Authority:

Contact Person:

Email Address:

Daytime Telephone Number:

Alternative Telephone Number:

ext.

Mailing Address or statement of last known address/general area they were living and name of local newspaper if address is not available

Unit Number:

Street Number:

Street Name:


P.O. Box:

City/Town:	Province:	Country:	Postal Code:
There are required documents and materials to be submitted to the Ontario Land Tribunal (OLT) based on the type of legislation and section you are filing under. Please see the Section 6 Checklist(s) located here and submit all documents listed on the checklist.			

Section 7 – Filing Fee

Required Fee			
Please see the attached link to view the OLT Fee Chart .			
Total Fee Submitted: \$1, 100			
Payment Method	<input type="checkbox"/>	Certified Cheque	<input type="checkbox"/>
	<input type="checkbox"/>	Money Order	<input type="checkbox"/>
		Lawyer's general or trust account cheque	
	<input checked="" type="checkbox"/>	Credit Card	
If you wish to pay the appeal fee(s) by credit card, please check the box above and OLT staff will contact you by telephone to complete the payment process upon receipt of the appeal form. DO NOT INCLUDE YOUR CREDIT CARD INFORMATION ON THIS FORM. YOU WILL BE CONTACTED TO COMPLETE YOUR PAYMENT OVER THE PHONE.			
If a request for a fee reduction is being requested, please pay the minimum filing fee for each appeal and complete/submit the Fee Reduction request form .			
<input type="checkbox"/> Request for Fee Reduction form is attached (if applicable – see Appeal Form Guide for more information)			

Section 8 – Declaration (Mandatory)

Declaration		
I solemnly declare that all the statements and the information provided, as well as any supporting documents, are true, correct and complete.		
By signing this appeal form below, I consent to the collection of my personal information.		
Name of Appellant/Representative	Signature of Appellant/Representative	Date (yyyy/mm/dd)
Jennifer Meader		2022/08/24
Personal information or documentation requested on this form is collected under the authority of the <i>Ontario Land Tribunal Act</i> and the legislation under which the proceeding is commenced. All information collected is included in the Ontario Land Tribunal (OLT) case file and the public record in this proceeding. In accordance with the <i>Freedom of Information and Protection of Privacy Act</i> and section 9 of the <i>Statutory Powers Procedure Act</i> , all information collected is available to the public subject to limited exceptions.		

We are committed to providing services as set out in the *Accessibility for Ontarians with Disabilities Act, 2005*. If you have any accessibility needs, please contact our Accessibility Coordinator at OLT.Coordinator@ontario.ca or toll free at 1-866-448-2248 as soon as possible.

Section 9 – Filing Checklists (Mandatory)

Filing/Submitting your form and documentation

You must file your Appeal Form with the appropriate authority(s) by the filing deadline.

If the completed Section is:	Refer to the relevant checklist and submit all documents listed on the checklist when filing your Appeal Form.
Section 3B	Review the Section 3B Checklist(s) and attach all listed documents.
Section 4A	Review the Section 4A Checklist(s) and attach all listed documents.
Section 4B	Review the Section 4B Checklist(s) and attach all listed documents.

If the completed Section is:	You must file with the following:	
Section 3A	<p>Municipality or the Approval Authority/School Board</p> <p>*If you are filing under the <i>Ontario Heritage Act</i>, including under s. 34.1(1), please carefully review the specific section of that legislation to determine if your appeal needs to be filed with the Tribunal in addition to the Municipality or Approval Authority.</p>	
Section 3A & 3B or Section 4A or Section 4B or Section 6	<p>Ontario Land Tribunal 655 Bay Street, Suite 1500 Toronto, ON M5G 1E5</p>	<p>Phone: 416-212-6349 1-866-448-2248 Website: www.olt.gov.on.ca</p>
Section 5	<p>For the Areas of: Dufferin County (Mono) Region of Halton Region of Peel Region of Niagara City of Hamilton</p> <p>File with:</p>	<p>For the Areas of: Bruce County Grey County Simcoe County Dufferin County (Mulmur, Melancthon)</p> <p>File with: NIAGARA ESCARPMENT COMMISSION</p>

	<p>NIAGARA ESCARPMENT COMMISSION</p> <p>232 Guelph Street, 3rd Floor Georgetown, ON L7G 4B1</p> <p>Phone: 905-877-5191 Fax: 905-873-7452</p> <p>Website: www.escarpment.org Email: necgeorgetown@ontario.ca</p>	<p>1450 7th Avenue Owen Sound, ON N4K 2Z1</p> <p>Phone: 519-371-1001 Fax: 519-371-1009</p> <p>Website: www.escarpment.org Email: necowensound@ontario.ca</p>
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NOTE: Please review the notice of the decision you are appealing to determine the appeal deadline and the specific official with whom the appeal should be filed (e.g. Secretary-Treasurer, Clerk, Minister, Ontario Land Tribunal).

NOTE: Relevant portions of the applicable legislation should be reviewed before submitting this form. Please ensure that a copy of this Appeal Form is served in accordance with the requirements of the applicable legislation.