

**Ontario Land Tribunal**  
Tribunal ontarien de l'aménagement  
du territoire



**ISSUE DATE:** December 02, 2022

**CASE NO(S).:** OLT-22-002377  
(Formerly) PL210104

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

Applicant/Appellant: 30 Duke Street Limited  
Subject: Failure of Approval Authority to announce a decision respecting a proposed Official Plan Amendment  
Reference Number: OPA 20/005W/JVW  
Property Address: 22 Weber Street West  
Municipality/UT: Kitchener/Waterloo  
OLT Case No.: OLT-22-002377  
Legacy Case No.: PL210104  
OLT Lead Case No.: OLT-22-002377  
Legacy Lead Case 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/Appellant: 30 Duke Street Limited  
Subject: Application to amend the Zoning By-law – Refusal or neglect to make a decision  
Reference Number: 20/013/W/JVW  
Property Address: 22 Weber Street West  
Municipality/UT: Kitchener/Waterloo  
OLT Case No.: OLT-22-002378  
Legacy Case No.: PL210105  
OLT Lead Case No.: OLT-22-002377  
Legacy Lead Case No.: PL210104

**PROCEEDING COMMENCED UNDER** subsection 42(6) of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18

Applicant/Appellant:	30 Duke Street Limited
Subject:	Appeal of the Decision of Council to issue a permit with terms and conditions to (alter/erect/demolish/remove) a building or structure
Reference Number:	HPA-2022-V-015
Property Address:	22 Weber Street West
Municipality/UT:	Kitchener/Waterloo
OLT Case No.:	OLT-22-004383
OLT Lead Case No.:	OLT-22-002377
Legacy Lead Case No.:	PL210104

**Heard:** October 26, 2022, by video hearing

## **APPEARANCES:**

### **Parties**

### **Counsel/Representative\***

30 Duke Street Limited  
("Applicant/Appellant")

Jennifer Meader

City of Kitchener  
("City")

Lesley MacDonald

Region of Waterloo  
("Region")

Andy Gazzola

Friends of Olde Berlin Town ("FOBT")

Hal Jaeger\*

## **DECISION DELIVERED BY D. CHIPMAN AND ORDER OF THE TRIBUNAL**

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### **INTRODUCTION AND CONTEXT**

[1] The Tribunal originally set this Case Management Conference ("CMC") to organize for hearings of the merits of appeals filed regarding an official plan amendment ("OPA") and zoning by-law amendment ("ZBA") related to land owned by the Appellant.

Another panel of the Tribunal has set down a four-week hearing to commence on March 13, 2023.

[2] The Tribunal was advised by Ms. Meader, counsel to the Appellant that the Subject Land is located within the Civic Centre Neighbourhood Heritage Conservation District (“CCNHCD”), are designated under Part V of the *Ontario Heritage Act* and as such, any new development on the Subject Land is subject to the policies of the Civic Centre Neighbourhood Heritage Conservation District Plan (“CCNHCD Plan”) and therefore a *Heritage Act* permit is required.

[3] Although the CCNHCD Plan recognizes that this property is vacant, the City refused the *Heritage Act* Permit application and the Applicant appealed to the Ontario Land Tribunal (“OLT”), pursuant to subsection 42(6) of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18.

[4] The Tribunal was informed by Ms. Meader that the purpose of this CMC was to seek the Tribunal’s determination on a request to consolidate the heritage permit file (OLT Case No.: OLT-22-004383) with that of the OPA and ZBA file (OLT Case No.: OLT-22-002377) and to review the draft Procedural Order (“PO”) in relation to the Phasing of the hearing.

[5] The Subject Land is municipally known as 22 Weber Street West, Lot 5, Plan 390, in the City of Kitchener.

[6] The proposed development of the Subject Land can be described as construction of a new 19-storey multiple residential building, having 162 total units and 24 parking spaces.

[7] The Subject Land is designated 'High Density Commercial Residential' in the Civic Centre Secondary Plan. The High Density Commercial Residential designation permits a range of uses, including free standing multiple residential buildings at a maximum Floor Space Ratio ("FSR") of 4.0. The OPA proposes to retain the existing designation but with an increased FSR permission of 8.0.

[8] The ZBA application requests the Subject land be rezoned Commercial Residential Three Zone with Site Specific Provisions in order to permit the development as proposed:

1. A minimum front yard setback of 0.8 metres is proposed along King Street East, whereas a minimum front yard of 3.0 metres is required.
2. A minimum rear yard setback of 15.0 metres is proposed, whereas a minimum setback of one half the building height is required.
3. A maximum Floor Space Ratio of 8.0 is proposed, whereas a maximum Floor Space Index of 4.0 is permitted.
4. A minimum landscape area of 8% whereas a minimum area of 10% is required. A minimum of 24 parking spaces whereas a minimum of 183 spaces are required.

## **PARTICIPANT STATUS REQUEST**

[9] The Tribunal received a Participant status request from Kae Elgie, who has made presentations before City Council raising concerns with design guidelines as they relate to heritage conservation. Having canvassed the Parties and receiving no opposition, the Tribunal grants the requester Participant status.

## PROCEDURAL ORDER AND ISSUES LIST

[10] The Tribunal considered the following Phasing Plan which was submitted on consent by the Parties that would have the matter proceed in two phases as a result of the addition of the *Heritage Act* permit:

- Phase 1 – The Official Plan Amendment and Zoning By-law Amendment; and
- Phase 2 – The *Ontario Heritage Act* Permit to be scheduled upon issuance of the Tribunal’s written Decision in respect of Phase 1 as per, section 42 (1) of the *Ontario Heritage Act* which prescribes that no owner of property in a designated Heritage Conservation District may alter any part of a property or erect or demolish a building without obtaining approval from the municipality by way of a heritage permit.

[11] The Tribunal considered Rule 16.1 of the Tribunal’s *Rules of Practice and Procedure* in granting the consolidation which states:

### CONSOLIDATION

#### **16.1 Combining Proceedings or Hearing Matters Together**

The Tribunal may order that two or more proceedings be consolidated, heard at the same time, or heard one after the other, or stay or adjourn any matter until the determination of any other matter subject to any applicable statutory or regulatory restrictions.

[12] The Tribunal finds that a consolidation of the Applicant’s OPA and ZBA planning appeals (OLT Case No. OLT-22-002377) with the *Heritage Act* permit appeal (OLT-22-4383) is the most effective and expeditious manner in which to proceed.

[13] The consolidation of these appeals will not cause prejudice to any of the Parties; but rather, will allow for comprehensive planning considerations to be made in a two-phase hearing process, while at the same time effect efficiencies in the resources of the parties and the Tribunal.

[14] This manner will eliminate the need for a duplication of the evidence and avoids a situation where there are inconsistent findings of fact.

[15] The Tribunal having the benefit of an updated revised draft PO, inclusive of an Issues List containing issues related to sections 41.2.2, 42(1) and 68(3) of the *Heritage Act*, reviewed the contents and deems the PO as being final, in full force and effect for the purpose of governing the required procedures leading up to and including the hearing.

[16] The Tribunal also directs counsel to ensure that the PO includes submission of a hearing plan at least 30 days prior to the scheduled hearing.

[17] The Tribunal directs that Case Nos. OLT-22-002377 and OLT-22-004383 are consolidated.

## **ORDER**

[18] The Tribunal confers Participant status on Kae Elgie.

[19] The Tribunal directs that Case Files Nos. OLT-22-002377 and OLT-22-004383 are consolidated.

[20] The Tribunal Orders that the Procedural Order, attached hereto as Attachment 1 shall be in force and effect for the purpose of governing the required procedures leading up to and including the hearing commencing on March 13, 2023.

[21] A 20-day merit hearing is scheduled to proceed by video hearing commence on **Monday, March 13, 2023, at 10 a.m.** 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**

[22] 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>.

[23] 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 or +1 (647) 497-9373**. The **Access Code** is as indicated above.

[24] 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 video hearing 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.

[25] This Procedural Order now applies to the consolidated hearing and provides direction on the organization of the hearing and requirements before the hearing.

[26] This Member may assist with case management, however, is not seized of the hearing.

[27] No further notice of the hearing is required.

*"D. Chipman"*

D. CHIPMAN  
MEMBER

**Ontario Land Tribunal**

Website: [www.olt.gov.on.ca](http://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.



**OLT-22-002377 – Attachment 1**

**Ontario Land Tribunal**  
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OLT Case No.: OLT-22-004383  
OLT Lead Case No.: OLT-22-002377  
Legacy Lead Case No.: PL210104

## PROCEDURAL ORDER

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 hearing will proceed in two phases:
  - a. Phase 1 – The Official Plan Amendment and Zoning By-law Amendment; and
  - b. Phase 2 – The Ontario Heritage Act Permit, to be scheduled upon issuance of the Tribunal's written Decision in respect of Phase 1.
3. The Phase 1 video hearing will begin on **Monday, March 13, 2023 at 10 a.m.** at the following link:  
**GoTo Meeting:** <https://global.gotomeeting.com/join/719383509>  
**Audio-only telephone line: Toll-Free 1-888-299-1889 or +1 (647) 497-9373**  
**Access Code: 719-383-509**
4. 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.
5. The parties' initial estimation for the length of the Phase 1 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.

6. The parties and participants identified at the case management conferences are set out in Attachment 1.
7. 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.
8. 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.
9. 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.
10. 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.
11. In the event of consolidation with further appeals, all Parties and Participants accepted at any CMC shall be conferred standing at the consolidated hearing without the need for any further applications.

### **Requirements Before the Phase 1 Hearing**

12. 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 **November 21, 2022** and in accordance with paragraph 24 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.
13. Expert witnesses in the same field shall have a meeting on or before **December 16, 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 **January 13, 2023**.

14. 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 16 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.
15. 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 16 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.
16. On or before **January 27, 2023**, the parties shall provide copies of their witness and expert witness statements to the other parties and to the Tribunal Case Coordinator and in accordance with paragraph 24 below.
17. On or before **January 27, 2023**, a participant shall provide copies of their written participant statement to the other parties in accordance with paragraph 24 below. A participant cannot present oral submissions at the hearing on the content of their written statement, unless ordered by the Tribunal.
18. On or before **February 24, 2023**, the parties shall provide copies of their visual evidence to all of the other parties in accordance with paragraph 24 below. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing. All models shall be shared electronically.
19. On or before **February 17, 2023**, 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 24 below.
20. The parties shall cooperate to prepare a joint document book which shall be shared with the Tribunal Case Coordinator on or before **March 3, 2023**.
21. 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.*
22. 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.

23. The parties shall prepare and file a preliminary [hearing plan](#) with the Tribunal on or before **January 6, 2023** 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.
24. 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*.
25. 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.**

## ATTACHMENT 1

## LIST OF PARTIES AND PARTICIPANTS

## A. PARTIES

PARTIES		COUNSEL/REPRESENTATIVE
1.	<b>30 Duke Street Limited</b>	<b>Turkstra Mazza Associates</b> ██████████ ████████████████████  <b>Jennifer Meader</b> Email: <a href="mailto:jmeader@tmalaw.ca">jmeader@tmalaw.ca</a> Tel: ██████████
2.	<b>City of Kitchener</b>	<b>Legal Services Department</b> 200 King Street West, 4 <sup>th</sup> Floor Kitchener, ON N2G 4G7  <b>Lesley MacDonald</b> Email: <a href="mailto:Lesley.MacDonald@kitchener.ca">Lesley.MacDonald@kitchener.ca</a> Tel: (519) 741-2200 ext. 7267  <b>Katherine Hughes</b> Email: <a href="mailto:katherine.hughes@kitchener.ca">katherine.hughes@kitchener.ca</a> Tel: (519) 741-2200 ext. 7266
3.	<b>Region of Waterloo</b>	<b>Legal Services Department</b> 150 Frederick Street, 3 <sup>rd</sup> Floor Kitchener, ON N2G 4J3  <b>Fiona McCrea</b> Email: <a href="mailto:fmccrea@regionofwaterloo.ca">fmccrea@regionofwaterloo.ca</a> Tel: (519) 575-4518
4.	<b>Friends of Olde Berlin Town</b>	████████████████████ ████████████████████  <b>Hal Jaeger</b> Email: <a href="mailto:obtfriends@gmail.com">obtfriends@gmail.com</a> Tel: ██████████

**B. PARTICIPANTS**

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

22.	Kathryn Forler	[REDACTED]
23.	Neil Jensen	[REDACTED]
24.	Kae Elgie	[REDACTED]



**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.

	<b>Matters of Provincial Interest (Section 2 of Planning Act)</b>	<b>Party</b>
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
	<b>Provincial Policy Statement</b>	
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
	<b>Growth Plan for the Greater Golden Horseshoe</b>	
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
	<b>Region of Waterloo Official Plan</b>	
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 implement all requirements to address noise from stationary and transportation sources in conformity with the Regional Official Plan, including Sections 2.G.10, 2.G.13, 2.G.14, 2.G.15 and 2.G.16, including but not limited to an appropriate holding provision?	Region
<b>City of Kitchener Official Plan</b>		
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, 12.C.1.27, and 12.C.1.29??	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

<b>City of Kitchener Civic Centre Secondary Plan</b>		
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
<b>Kitchener Zoning By-law</b>		
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?  Do the requested site specific zoning regulations address adequate setbacks and driveway visibility triangles?  Does the driveway width comply with zoning regulations and Regional Requirements for Access By-law and policy?	City FOBT Region
<b>Kitchener Urban Design Manual</b>		
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),	FOBT

	<ul style="list-style-type: none"> <li>b) Cultural &amp; Natural Heritage (section 01.2.8, p. 18, item 7)</li> <li>c) Built Form (section 01.3.1, p. 19, item 9)</li> <li>d) Site Function (section 01.3.3, p. 23, items 8 and 9)</li> </ul>	
	<b>Civic Centre Neighbourhood, Heritage Conservation District Plan (HCD Plan)</b>	
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
	<b>Other</b>	
39	<p>What consideration, if any, should be given to:</p> <ul style="list-style-type: none"> <li>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;</li> <li>b) Region of Waterloo Official Plan Amendment No. 6 as adopted; and</li> <li>c) The PARTS Central Plan?</li> </ul>	FOBT Applicant
40	Do the proposed applications represent good planning and are they in the public interest?	FOBT
	<b>Phase 2: Ontario Heritage Act Permit</b>	
41	Is there sufficient information before the Tribunal to issue a Heritage Permit pursuant to section 42 of the Ontario Heritage Act?	City

42	Do the proposed applications have sufficient regard to the Ontario Heritage Act, including but not limited to, sections 41.2.2, 42(1) and 68(3)?	FOBT
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**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

**ATTACHMENT 4**  
**SUMMARY OF FILING DATES**

<b>EVENT</b>	<b>DATE</b>
List of Witnesses	November 21, 2022
Expert Witness Meetings	December 16, 2022
Hearing Plan	January 6, 2023
Agreed Statement of Facts & Remaining Issues	January 13, 2023
Participant Statements	January 27, 2023
Witness and Expert Witness Statements	January 27, 2023
Reply Witness Statements	February 17, 2023
Visual Evidence	February 24, 2023
Joint Document Book	March 3, 2023
OLT Hearing Commences	March 13, 2023



**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.