

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: December 19, 2024

CASE NO.: OLT-22-002377

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 W (22 Weber Street W.)
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 W (22 Weber Street W.)
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 W
Municipality/UT:	Kitchener/Waterloo
OLT Case No:	OLT-22-004383
OLT Lead Case No:	OLT-22-002377
Legacy Lead Case No:	PL210104

BEFORE:

GREGORY J. INGRAM & YASNA FAGHANI MEMBER)))	Thursday, the 19 th day of December, 2024
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THIS MATTER having come before the Tribunal for a Case Management Conference with the Tribunal's Decision and Procedural Order issued on November 21, 2024;

AND THE TRIBUNAL having received a request on consent of the Parties to amend the attachments contained in the Procedural Order;

THE TRIBUNAL ORDERS that the following be added to the Procedural Order:

1. Addition of Ms. Elgie to the list of Participants;
2. Complete style of cause has now been inserted; and
3. Mr. Ciccone has been added as co-counsel for the City.

"Euken Lui"

EUKEN LUI
ACTING REGISTRAR

Ontario Land Tribunal

Website: 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.



Ontario Land Tribunal

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ISSUE DATE:

PL210104

OLT Case No.

ONTARIO LAND TRIBUNAL

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 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

OLT Case No.:

PL210104

OLT File No.:

PL210105

PROCEEDING COMMENCED UNDER subsection 42(6) of the *Ontario Heritage Act*, R.S.O. 1990, c. O.22.

Applicant and Appellant:

30 Duke Street Limited

Subject:

Heritage Conservation Act Appeal

Reference Number:

HPA-2022-V-015

Property Address:

22 Weber Street W

Municipality/UT:

Kitchener/Waterloo

OLT Case No.:

OLT-22-004383

OLT Lead Case No.:

OLT-22-002377

Legacy Lead Case No.:

PL210104

OLT Case Name:

30 Duke Street Limited vs. Kitchener (City)

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 **April 14, 2025** at **10:00 a.m.** through video link <https://meet.goto.com/348282861>. When prompted, enter the code **348-282-861**.

GoTo Meeting: <https://meet.goto.com/348282861>

Access code: 348-282-861

Audio-only line: +1 (647) 497-9373 or (Toll-Free) 1-888-299-1889

Audio-only access code: 348-282-861

4. The parties' initial estimation for the length of the Phase 1 hearing is **15** 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. 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 **December 16, 2024** and in accordance with paragraph 21 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.
11. Expert witnesses in the same field shall have a meeting on or before **January 17, 2025** 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 31, 2025**.
12. 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 14 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.
13. 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 14 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 14 below.
14. On or before **February 21, 2025**, 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.
15. On or before **February 21, 2025**, 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.
16. On or before **March 10, 2025** the parties shall confirm with the Tribunal if all the reserved hearing dates are still required.
17. On or before **March 28, 2025**, 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. All models shall be shared electronically.

18. On or before **March 14, 2025**, 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 **April 4, 2025**.
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 **April 4, 2025** 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 1 - PARTIES & PARTICIPANTS

Parties

1. 30 Duke Street Limited

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2. City of Kitchener

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3. Region of Waterloo

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Fiona McCrea and Andy Gazzola
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4. Friends of Olde Berlin Town

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Hal Jaeger
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Participants

1.	Daniel Ariza	dariza347@gmail.com
2.	Neil Baarda	neil.baarda@gmail.com
3.	Ilona Bodendorfer	synergistic_solutions@sympatico.ca
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10.	North Waterloo Region Branch of Architectural Conservancy Ontario	rowell01@sympatico.ca
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20.	Kathryn Forler	kathrynforler@gmail.com
21.	Maaike Asselberg	masselbergs@sentex.ca
22.	Micah Sadler	mica@sadlerrealty.ca
23.	Ron Brohman	r.f.brohman@gmail.com
24.	Kae Elgie	kaeelgie@yahoo.com

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 2020 and Provincial Planning Statement 2024	
2	a) Are the proposed Official Plan Amendment and Zoning By-law Amendment applications (the proposed applications) consistent with the PPS 2020, including but not limited to, policies 1.1.3.2, 1.1.3.3, 1.1.3.4, 2.6 and 4.6? <i>(Issue may no longer apply in light of PPS 2024)</i>	City FOBT
	b) Are the proposed Official Plan Amendment and Zoning By-law Amendment applications (the proposed applications) consistent with the PPS 2024, including but not limited to, sections 2.1.3, 2.1.4, 2.1.6 a), 2.2.1, 2.3.1, 2.4.1, 2.4.2.3, 4.6.1, 4.6.3, 6.1.1, 6.1.5, 6.1.6, 6.1.7, 6.1.11, and 6.1.12?	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? <i>(Issue may no longer apply in light of PPS 2024)</i>	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 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

Region of Waterloo Official Plan Amendment 6		
8	What consideration, if any, should be given to the following policies of OPA 6:	Applicant
	a) Do the proposed applications conform to Policy 2.C.2.2.(f) and general objective bullet #8 (Chapter 2, page 3) regarding cultural heritage conservation?	FOBT
	b) Do the proposed applications conform to Policy 2.D.2.8, regarding the appropriate location of major intensification?	FOBT
	c) Do the proposed applications conform to Policy 2.F.3, regarding intensification on properties designated under the OHA?	FOBT
	d) Do the proposed applications conform to Policy 2.I.5.1, regarding exceeding intensification and density targets?	FOBT
	e) Do the proposed applications have sufficient regard to Objective 3.A., bullet 1, regarding supporting a range of housing?	FOBT
City of Kitchener Official Plan		
9	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
10	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
11	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
12	Do the proposed applications conform to the Urban Design objectives in Section 11 (11.1.1 through 11.1.8)?	City FOBT
13	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
14	Do the proposed applications conform to the Cultural Heritage Resources objectives in Section 12 (12.1.2)?	City FOBT
15	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
16	Do the proposed applications conform to the Active Transportation objectives in Section 13 (13.1.1, 13.1.3, and 13.1.7)?	City
17	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
18	Do the proposed applications conform to the City of Kitchener Official Plan objective 3.2.5?	FOBT
City of Kitchener Civic Centre Secondary Plan		
19	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
20	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		
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?	FOBT
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
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)	FOBT

	c) Built Form (section 02.3.1, p. 6, items 2 and 4) d) PARTS Central (section 02.4.2, p. 12, item 7)	
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
Other		
39	What consideration, if any, should be given to The PARTS Central Plan?	Applicant
40	Do the proposed applications represent good planning and are they in the public interest?	FOBT
Phase 2: Ontario Heritage Act Permit		
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

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

EVENT	DATE
List of Witnesses	December 16, 2024
Expert Witness Meetings	January 17, 2025
Agreed Statement of Facts & Remaining Issues	January 31, 2025
Participant Statements	February 21, 2025
Witness and Expert Witness Statements	February 21, 2025
Reply Witness Statements	March 14, 2025
Confirm with Tribunal if all hearing dates are required	March 10, 2025
Visual Evidence	March 28, 2025
Hearing Plan	April 4, 2025
Joint Document Book	April 4, 2025
OLT Hearing Commences	April 14, 2025