

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 File No.: OLT 22-002377
Legacy 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)

Closing Submissions of the City of Kitchener

1. Introduction

This is the appeal of an official plan amendment and a zoning by-law amendment application (the “**Applications**”) for the property known as 22 Weber Street West (the “**Subject Property**”) in the City of Kitchener (the “**City**”), which if approved would facilitate redevelopment with a 19 storey tower.

The Subject Property abuts 18 Weber St. W. to the West; 28 Weber St. W. to the East; and 27 and 31 Roy St. to the North, all which contain a 2.5 storey residential building.

These residential buildings on Roy Street have a residential typology (i.e. they “look” residential); their City of Kitchener Official Plan (the “**City OP**”) designation allows for residential; the houses are zoned residential; and the houses currently have tenants in them (confirmed by every witness).

The Subject Property is designated High Density Commercial Residential in the City Civic Centre Secondary Plan (the “**Secondary Plan**”), which permits a floor space ratio (“**FSR**”) of 4.0. The Subject Property is zoned CR-3 in the City’s 85-1 Zoning By-law, number 85-1 (the “**Zoning By-law**”).

The Applicant is seeking the following site-specific regulations to the CR-3 Zone:

- Minimum front yard setback of 0m where 3m is required;
- For portions of the building up to 5m tall, a rear yard setback of 8m is proposed. For portions greater than 5m, 14m rear yard setback is proposed, where half the building height is required;
- 5% landscaped area instead of the required 10%;
- A height cap of 19 storeys.

The Subject Property is within the Civic Centre Neighbourhood Heritage Conservation District (the “**District**”) designated under Part V of the *Ontario Heritage Act*, RSO 1990, c O18 (the “**Heritage Act**”).

Timeline

The Applications were deemed complete in August of 2020, nearly 5 years ago, and requested permissions for a 15 storey tower. The Applications were appealed for a non-decision 5 months later in January 2021. After the appeal, the Applicant revised its request to 19 storeys, and the Tribunal ordered it to make a resubmission to the City, which it did.

Despite the Applications being filed 5 years ago, the Applicant provided a revised floor plan on March 14, 2025; a revised shadow study in April 2025; and a further revised floor plan in April 2025. As the Tribunal will recall, some of these drawings were revised less than 24 hours before the start of the hearing, in a complete disregard for the filing deadline for visual evidence on April 2, 2025. Instead, an

outdated floor plan that did not match the renderings was provided to the City and FOBT and attached to the Agreed Statement of Facts for Land Use Planning.

The City submits that the revised concept is rushed, last minute, and missing some critical information, such as the lack of rooftop amenity or play areas. Most importantly, the Applications:

- Are not consistent with the Provincial Planning Statement, 2024 (“**PPS**”);
- Do not conform to the Region of Waterloo Official Plan (“**Region OP**”);
- Do not conform to the City of Kitchener Official Plan (“**City OP**”); and
- Do not meet either the wording or the intent of a significant number of policies and guidelines found in the City’s Urban Design Manual (“**UDM**”) and the Civic Center Neighbourhood Heritage Conservation District Plan (“**CCNHCDP**” or “**Heritage Conservation District Plan**”).

City Position

The City’s position is that the Subject Property can be redeveloped, but *this* proposal is not appropriate.

The Appellant’s proposal fails to meet the intent of the UDM and Heritage Conservation District Plan

The proposal fails to meet either the wording or intent of key policies and guidelines in the UDM and Heritage Conservation District Plan. For some guidelines, the proposal doesn’t even come close.

For example, the Applicant’s own visual evidence (page 23) of the proposed building shows 14 storeys intruding into the 45 degree angular plane required by the Heritage Conservation District Plan.

The purpose/intent of the angular plane is to regulate height of developments along Weber St W. The tallest buildings in existence on Weber St. W. are 4-5 storeys. The applicant is proposing 19 storeys:

- With no front yard setback;
- With no setbacks;
- With no height transition;
- Cutting the Zoning By-law's required rear yard setback in half;
- Next to 2.5 storey houses on three sides (the fourth side being the road); and
- Which is incompatible with the character of the Heritage Conservation District.

Not only does the proposal not *meet* the angular plane, it does not even try to meet the *intent* of guideline 6.9.4 in the Heritage Conservation District Plan. This is in stark contrast to Mr. Currie’s work on 50 Weber Street W., down the street and in the same Heritage Conservation District, which barely intrudes into the angular plane and meets the intent through setbacks (Applicant’s Visuals, p26).

The Applications lack any transition

There is literally no transition between the proposed building and the adjacent properties. This proposal is 19 storeys, and it is immediately abutted by a building that is 2.5 storeys on all sides except for the road itself. With respect to the road, it is proposing zero meters of front yard setback. While there are tall buildings on the other side of Weber Street West: (1) they are not in a Heritage Conservation District; and (2) those buildings are not surrounded on three sides by 2.5 storey residences.

Approval of the Applications would limit the development potential of 18 and 28 Weber

If the Tribunal approves this 19 storey tower with insufficient physical separation, it will be limiting the development potential of 18 Weber St. W. and 28 Weber St. W. which abut the Subject Property.

If the abutting property owners build within the Zoning By-law in the future, it would result in significant privacy and overlook issues, obstruct sky views, and result in an overwhelming scale.

This proposed development would also prevent 18 and 28 Weber St. W from seeking the same building massing in a future redevelopment. It was Ms. Fahimian's evidence that if this site is appropriate, there is no reason that 18 Weber St. W and 28 Weber St. W. would not be appropriate for the same development if they consolidated with their adjacent lot, or portions thereof, all while maintaining and expanded the existing built heritage buildings. However, it would be impossible to approve the same building on either site, because the buildings would be too close together.

Specifically, Ms. Fahimian testified that if either neighbouring property had the same building, the balconies would be only 3.6m apart. This would result in 100% overlook, and a severe loss of privacy. Planning in the public interest means making decisions about the built form envelope at the OPA/ZBA stage to ensure people who live in these buildings will be protected from adverse impacts.

If the Tribunal were to approve the Applications, it would be rewarding the Applicant for being the first to propose a giant tower, which comes at the expense of limiting the development potential of 18 and 28 Weber St. W. That is neither fair, nor is it good planning in the public interest. Simply put, meeting the physical separation for this site means there is no need or concern for any hypothetical development proposal on adjacent lands – any future development on adjacent lands will be possible. Not having regard for physical separation at the OPA/ZBA stage will limit potential development and housing opportunities on adjacent sites. The Tribunal would essentially be permitting an inappropriate amount of height and density for this site, and limiting development opportunities of adjacent lands, creating an unacceptance and irreversible imbalance.

This is why the Tall Building Guidelines have physical tower separation requirements. An approval authority need not guess what adjacent landowners might want to build: the guidelines ensure that only developments that will not impact the ability of other owners to develop in the future are approved.

To address these issues, the Tribunal heard from 2 witnesses on behalf of the Applicant, one witness by the Friends of Olde Berlin Town (“**FOBT**”) and 3 witnesses brought by the City. These submissions will start by reviewing the consultants who were hired by the applicant for this hearing.

2. Appellant’s Case

A. Andrea Sinclair – Urban Design

For urban design and land use planning, the Applicant relied on Andrea Sinclair who provided her opinion that the application meets most of the requisite tests and should be approved.

Tall buildings in the Heritage District

Ms. Sinclair took the Tribunal to a handful of other examples of tall buildings that are found in the same heritage district as the Subject Property.

She, along with every other witness in this hearing, agreed that those buildings were built long before the Heritage Conservation District Plan was in place. Ms. Choudhry later clarified that a big reason that the Heritage Conservation District Plan was put in place was specifically to prevent more of these tall buildings in the District.

Ms. Sinclair agreed that it is important to consider urban design early in the development pipeline. It was her opinion that many of the issues that the City has should be dealt with at the site plan stage. The City agrees that some things can be dealt with at Site Plan, which is why the City did not call Noise or Wind Evidence, because *these* matters are appropriately dealt with at Site Plan.

Potential to Develop: Ms. Sinclair’s also agreed that there is a potential to develop the Subject Property within the Zoning By-law and achieve a height of 8 storeys. When asked whether the building could have setbacks she said it would be too expensive, but proffered no evidence to support that claim. She also agreed that cost is not a factor that the Tribunal can consider in its decision.

Rear Yard Setback: At paragraph 214 of her witness statement (page 60, Compendium), Ms. Sinclair writes: “*The proposed ZBA creates certainty as to the height and density that is proposed and establishes a **generous** rear yard setback to the more sensitive interface to the north*”. She confirmed that the proposed setback is less than half of what the zoning by-law requires.

When the City asked her to confirm how cutting the setback in half could be considered “generous” she said: “*I came to that conclusion by looking at other areas in the City. This 14m is a maximum, notwithstanding height. Maybe generous was overly... anyways this is an appropriate setback*”. This is not a credible response and demonstrates no ability to reconsider her opinion.

Tower Separation: Ms. Sinclair claimed that there are a number of other towers in the City that do not meet the tower separation guidelines, citing 900 King St. W. as an example. Under cross examination she agreed that it actually does meet the physical separation on all sides except for the back of the tower; and that 900 King W. is in a completely different context and not in a heritage district.

Ms. Fahimian was more specific on this point, saying that it **exceeded** the tower separation guidelines on three sides, and met 80% of the target on the remaining side, only because there is a laneway there, so 100% compliance was not required by the City.

Tall buildings in the Heritage District do not create a precedent: The City took Ms. Sinclair to policy 13.1.2 in the City OP (Document Book, page 1929) which reads in part:

Medium Density Multiple Residential <i>“The aim of the medium density multiple residential designation is to permit some integrated, medium density redevelopment...”</i>	High Density Multiple Residential <i>“The aim of the high density multiple residential is to recognize the existing high rise apartment buildings located at...”</i>
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High Density Multiple Residential is the designation that applies to the four tall buildings in the District. It was Ms. Choudhry’s evidence that part of the reason the Heritage Conservation District Plan was put in place was to prevent additional tall buildings, and the City OP also notes that the high-density multiple residential designation exists to recognize four buildings built before the City OP or the Heritage Conservation District Plan were put in place, therefore, they don’t create a precedent.

Redeveloping 18 or 28 Weber St. W.: With respect to the redevelopment of 18 and 28 Weber St. W., which abut the Subject Property, Ms. Sinclair said future towers would simply be built closer to each other and did not address any the negative impacts of placing two towers just a few meters apart.

She did not address the cumulative impact of having two closely situated towers.

No ability to ensure attainable housing: Ms. Sinclair also clarified that although her client claims to be building “attainable” housing, the City has no way of ensuring that the units are sold at an attainable price point. Note also that “attainable” housing is not a defined term, and the Applicant is not proposing “affordable” housing (as defined in the PPS).

0m Front Yard Setback and Impact on Landscaping: Ms. Sinclair said her client could work with the Region to determine what landscaping or streetscape features could be in the Region's right of way in the 0-meter front yard setback.

When asked to provide a single example of an agreement between the Region and a developer to have landscaping in the Region's right of way she could not provide one. Moreover, the Minutes of Settlement between the Applicant and the Region prohibit this: "*No landscape structures located within the road widening*" (Document Book, page 4714, para 5(d)). This is precisely the City's concern.

Amenity Space: Ms. Sinclair said that that proposal would provide over 1700m² of amenity space, which exceeds the zoning requirement. She said the privately owned balconies would account for 1600m² of that amenity space.

When asked if she could provide a single example of the City allowing private balconies to be counted toward amenity space under Zoning By-law 85-1 she could not. This is because private balconies are not permitted to be counted as amenity space in Zoning By-law 85-1.

Ms. Sinclair said that it was her opinion that the UDM guidelines that require amenity space are meant for ground-oriented development. This is not what the guidelines say.

The UDM, Part C, section 11 (Exhibit 8) states (emphasis added):

An outdoor amenity area shall be provided for all residential and institutional developments having a residential component that contains more than either 20 residents or 20 dwelling units and provide a minimum of 2 square meters of common outdoor amenity space at ground level for either each resident or each dwelling unit.

Ms. Meader claimed in her oral submissions that the UDM contains an exception to this guideline. This is plainly untrue. The language of Part C of the UDM (Exhibit 8) is very clear, and have no exceptions.

B. Dan Currie – Cultural heritage

The Applicant called Mr. Dan Currie who opined that the development proposal is appropriate from a heritage standpoint and should be approved. Like Ms. Sinclair, under cross examination he agreed that all the tall buildings in the District were built before the plan was put in place.

Adverse Impacts: Under cross examination Mr. Currie was asked if the proposed building were taller, would it have any adverse impacts with respect to cultural heritage? He said no.

When asked if the proposed building had less rear yard setback, would there be adverse impacts on cultural heritage? He said "*if there is no cultural heritage impact from height, it is logical to assume there is none from less rear yard setback*".

It is submitted that neither of these conclusions are logical or reasonable.

Ontario Heritage Act: The City took Mr. Currie to section 41.2(2) of the Heritage Act (page 2569 Document book). Mr. Currie agreed that the Act says in the event of a conflict between a heritage conservation district plan and a municipal by-law, the Heritage Conservation District Plan prevails.

He then agreed that the Heritage Conservation District Plan has policies for high density development and that these policies were more restrictive than the applicable by-law.

He also agreed that the Zoning By-law rear yard setback of half the building height creates an angular plane of about 63 degrees, but the Heritage Conservation District Plan requires 45 degrees and that this is another example where the Heritage Conservation District Plan is more restrictive.

These are all examples of where the Heritage Conservation District Plan is more restrictive and should prevail over the Zoning By-law.

Angular Plane: The Heritage Conservation District Plan describes the angular plane as applying to Weber Street West, as follows (page 2444, Document Book):

any buildings taller than 5 storeys abutting a residential property to the rear should be constructed within a 45 degree angular plane where feasible, starting from the rear property line, to minimize visual impacts on adjacent property owners

When asked whether his client could build something within this requirement, he said that it "questions feasibility" but that it was not his job to demonstrate an 8 storey build is not feasible.

He then discussed a rendering that he prepared that shows the difference between what the Heritage Conservation District Plan requires (purple) and the proposed build (orange) (p31, Applicant Visuals).

When asked why the purple concept is set back 10m from the front yard, Mr. Currie said it was wrong and should probably be 7.43m and that the building could be larger and still meet the Heritage Conservation District Plan.

The conclusion of Mr. Currie's evidence on feasibility implied that building within the Heritage Conservation District Plan "questions feasibility", and that is sufficient to disregard the angular plane.

This is both illogical, and inconsistent with Mr. Currie's own signed Heritage Impact Assessments for other developments, including 50 Weber Street West, down the street from the subject property. 50 Weber St W has provisional site plan approval for an 8 storey building with step backs in the Heritage Conservation District Plan (page 26 applicant visuals). **He agreed that the step backs here help the**

building meet the intent if not the letter of the angular plane. This is contrary to his opinion on 22 Weber St W, that setbacks are not required.

How to Measure the Angular Plane: Mr. Currie claims that the correct place to measure the angular plane is from the front property line, across the street on the other side of Roy (Applicant Visuals, p23).

He seems to think this because the houses on Roy that abut the Subject Property are designated Office Residential Conversion in the City OP (which permits residential). However, Mr. Currie agrees that:

- The houses on Roy have a residential typology (i.e. they “look” residential);
- Their designation within the City OP allows residential use;
- These houses are zoned R5 which is a residential zone;
- They currently have people living in them; and
- Guideline 6.9.4 in the Heritage Conservation District Plan states that the angular plane starts “*from the rear property line*”.

When asked: “*Does the policy say ‘measure it from the front lot line of a non-adjacent property across the street?’*” he laughed, and said “*I’m sorry I shouldn’t laugh. No it does not say that*”.

Why 19 Storeys? Both Mr. Currie and Ms. Sinclair clarified that neither of them came up with 19 storeys – it was their client who proposed it. Isn’t it curious that 19 storeys perfectly lines up with this nonsensical interpretation of drawing the angular plane from across the street?

50 Weber Street West: Mr. Currie was shown the original drawing he prepared for 50 Weber St W (Exhibit 9). He agreed that when he originally submitted the HIA for 50 Weber St W, he also drew the angular plane from across the street on a non-adjacent property.

In his final, signed HIA, which was accepted by the City, his own diagram changed to show it measured from the rear property line (Applicant Visuals, page 26).

Mr. Currie’s interpretation of where to measure the angular plane is both wrong and completely illogical. In addition, Mr. Currie’s *own* interpretation of this wording is entirely inconsistent between files.

Adverse Impacts: Mr. Currie’s evidence focused on adverse impacts to the immediately adjacent heritage properties but lacked an analysis of the impacts on the District more broadly.

No Assessment of Cumulative Impacts: Mr. Currie concluded his evidence under cross examination by confirming that he did not analysis of cumulative impacts.

3. Friends of Olde Berlin Town Case

Michael Barton – Planning

FOBT called one witness who was qualified as an expert witness in land use planning. It was Mr. Barton's opinion that the applications are not consistent with the PPS, do not conform to the Region OP or City OP, and do not represent good planning in the public interest. Mr. Jaeger's closing submissions summarized Mr. Barton's evidence sufficiently so the City's submissions will not be repetitious.

4. City of Kitchener's Evidence

A. Eric Schneider, Land use planning

The City called Mr. Eric Schneider who is a Senior Planner for the City and is a Registered Professional Planner. Mr Schneider provided his opinion that the Applications: are not consistent with the PPS 2024; do not conform to either the Region OP or the City OP; and do not represent good planning.

It was Mr. Schneider's evidence that the proposed development will result in adverse impacts including privacy, overlook, building separation, insufficient amenity space, and no transition.

Mr. Schneider confirmed that the Zoning By-law requires that as buildings become taller, they have more rear yard setback in this area. Despite this, the Applicant is proposing double the FSR, more than double the height, and cut the rear yard setback in half. Mr. Schneider's opinion, like all of the City witnesses, is that something can be built here, but this proposal is a significant overbuild.

This opinion is reflected in policy 3.C.2.17 of the City OP which provides policies for Protected Major Transit Station Areas and clarifies that these policies quote "*should not be interpreted to mean that every property located within a protected major transit station area is necessarily appropriate for major intensification*" (para 67, page 529, Witness Statement Compendium).

As a Senior Land Use Planner, Mr. Schneider's opinion on consistency with the PPS, and conformity with the Region and City OP relies in part on the expert opinion of other professionals. As such, the opinions of both Ms. Choudhry and Ms. Fahimian also inform Mr. Schneider's opinion on the applicable tests, which the Tribunal also must consider.

B. Pegah Fahimian – Urban Design

The City's called Ms. Pegah Fahimian who has been practicing Urban Design for over 10 years, has an Undergraduate Degree in Architecture, a Master's Degree in Architecture and a Master's Degree in Urban Design. Ms. Fahimian is a member of the Ontario Association of Architects.

Ms. Fahimian meticulously took the Tribunal through the UDM, read in context with the City OP and Zoning by-law, illustrating how the three work together to inform building design.

In summary, it was her evidence that this proposal represents overdevelopment of the Subject Property because of the specific site context and for that reason it should not be approved by the Tribunal.

Ms. Fahimian took the Tribunal through UDM guidelines regarding massing and height, providing her opinion that the building height at 19 storeys, combined with the insufficient setback (2.8m of physical separation where the guidelines stipulate 9.8m) and completely missing step-back, result in a building that is incompatible with this site and does not meet the wording or intent of the tall building guidelines.

It was her opinion that it is not only incompatible with the existing built form, as the site is surrounded on three sides by residential dwellings that are 2.5 storeys tall, but is also incompatible with the future redevelopment of 18 and 28 Weber St W.

Because the proposed building is so tall and has insufficient physical separation, it will result in adverse impacts on the redevelopment of 18 and 28 Weber St. W even if they are building without a Zoning By-law amendment, including loss of natural light and privacy concerns. These impacts are identified by the participant statements of both the owners and tenants at 28 Weber St. W (Cathryn Harris and Simon Euteneier). It was Mr. Schneider's and Ms. Fahimian's opinion that it is not good planning to approve one development that limits the ability of another property to reach its development potential.

Ms. Fahimian also opined that there is nothing unique about this site that makes it better for development than other sites along Weber St W, and if this is approved, other applicants will look for the same amendments to build a 19 storey tower with insufficient setback and physical separation. 18 and 28 Weber could not be developed with the same building as is proposed here, because this proposal provides insufficient physical separation resulting in privacy and overlook impacts.

Ms. Fahimian took the Tribunal to the Tall Building Design Guidelines (Document book, page 2302) which require a 3m stepback from the base to the 19 storey height, to mitigate perceived massing and visual impact on the public realm, and reduce wind and shadow impacts. She confirmed there is no stepback, and only the second storey has been recessed by 2m.

It was also her opinion that the proposed development has insufficient amenity space, and the UDM (Exhibit 8) requires common amenity space be provided at 2m² per unit/resident. Ms. Meader claimed that Ms. Fahimian said 40m² is the applicable minimum but this is a complete fabrication. Ms. Fahimian said that 40m² is a minimum for developments of 20 units, not for this development at 167 units.

Overall it is Ms. Fahimian's opinion that if the Tribunal approves this development proposal, it will set a highly inappropriate precedent for the rest of Weber Street West and other applicants will look to build similar towers with insufficient separation and overwhelming massing, resulting in privacy, overlook, and quality of life impacts.

It was her opinion that the Subject Property can be developed with a more compatible development that still provides additional housing that is appropriate and compatible with the planned function of Weber Street West and the District without causing adverse impacts.

C. Deeksha Choudhry – Cultural Heritage

The City called Ms. Deeksha Choudhry, a Heritage Conservation District Planner with the City with an Undergraduate Degree in Planning and a Masters of Science in Architectural Conservation. Ms. Choudhry is a provisional member of the OPPI. Ms. Choudhry began by giving the Tribunal a contextual tour of the District, which is one of the oldest surviving neighbourhoods in the City, demonstrating a valuable streetscape and architecture.

It was her evidence that the Heritage Conservation District Plan was put in place to recognize that cultural heritage, and also to prevent its erosion by the introduction of incompatible development. Since the Heritage Conservation District Plan was put in place in 2008, not a single tall building has been approved or built in the conservation district, including Weber Street West.

The neighbourhood is designated under Part 5 of the Heritage Act, and it was her evidence that the Heritage Conservation District Plan focuses on the built heritage *typologies*, not *land use*. This is because the CCNHCH recognizes architectural, streetscape and historical character rather than use.

Ms. Choudhry's expert evidence was that the development proposal is incompatible with this specific area, being surrounded on three sides by residential dwellings that are 2 to 2.5 storeys tall that would be adversely impacted by having a 19 storey tower adjacent to their properties.

Ms. Choudhry led the Tribunal through the general policies and guidelines in the Heritage Conservation District Plan, and then the policies and guidelines that apply exclusively to Weber St. W.

Ms. Choudhry noted that there are only three areas in the whole Heritage Plan that have site-specific policies and guidelines regarding the built form of development, and one of them is Weber St. W. These policies only apply to 25 properties on Weber Street West to ensure any development is sympathetic to the existing built form typologies.

It was her evidence that the Heritage Conservation District Plan is very intentional about the kind of built form, massing, height, and architecture that is compatible with the streetscape of Weber Street West. It was her professional opinion that this proposed development does not meet the key guidelines.

Contrast that with the evidence of Mr. Currie that this 19 storey building will have no adverse heritage impact, and that this would be the same even if the building were taller or had less rear yard setback.

Angular Plane: One of the guidelines that the proposal doesn't meet, 6.9.4, bullet 7 in the Heritage Conservation District Plan, is the much discussed 45 degree angular plane. It was Ms. Choudhry's evidence that the two properties on Roy street that abut the Subject Property were built at the turn of the century and are residential dwellings in term of typology. It was Ms. Choudhry's evidence that:

- The typology of the houses on Roy is residential (i.e. they look like residential building);
- Their official plan designation allows for residential uses;
- They are zoned residential; and
- People currently live in these buildings.

While it was her evidence that the Heritage Conservation District Plan focuses on *typology*, by every metric, the houses on Roy are "residential" and therefore the angular plane applies.

Ms. Choudhry confirmed that the angular plane should be measured from the rear property line of the Subject Property, because that is what the wording requires: "*from the rear property line*".

Policies versus Guidelines: While Ms. Meader's cross examined Ms. Choudhry regarding the "would, should and could" of the Heritage Conservation District Plan, in redirect Ms. Choudhry spoke to section 3.3.5.2 of the HCD which are the **policies** specific to Weber Street West (Document Book, page 2384). Policy (f) specifically says that "*design guidelines provided in section 6.9.2 of this Plan will be used to review and evaluate proposals...*". This specifically is what gives the Weber St W guidelines weight.

Ontario Heritage Act: Lastly Ms. Choudhry took the Tribunal to section 41.2 of the Heritage Act (Document Book, page 2569) which states that in the event of a conflict between a Heritage Conservation District Plan and a municipal by-law that affects the designated district, the plan prevails.

Summary re: Policies and Guidelines: Ms. Choudhry opined that of the 15 heritage policies and guidelines that apply to the Subject Property: two are not applicable; only two guidelines and one policy are met; and crucially: the development would not meet the remaining 10 policies and guidelines, either by literally following their words, or by meeting their intent.

Summary of Expert Evidence: Overall it was Ms. Choudhry's professional opinion that if built, the proposal would not only negatively impact the architectural character and streetscape, but would be a dangerous precedent for a neighborhood that is quite literally recognized specifically for its heritage character. Not only will the four properties abutting the Subject Property face adverse impacts but there is a much larger implication here. If approved, this proposal would impact the integrity of the heritage neighbourhood as a whole, adversely impacting its architectural, contextual, and streetscape character, which are the reasons for its designation under the Heritage Act.

5. **Weighing Evidence**

The Tribunal is in the position of having heard from 6 witnesses in this hearing and must weigh their evidence to come to a decision.

With respect to land use planning:

The Tribunal should prefer the evidence of Mr. Schneider over that of Ms. Sinclair. While both are Registered Professional Planners, Mr. Schneider's interpretation of the applicable policies was more reasonable. His analysis was laser focused on only the relevant policies to provide the Tribunal with the information that it requires in an efficient manner.

Mr. Schneider was very careful to stay in his lane, and defer heritage or urban design issues to Ms. Fahimian and Ms. Choudhry, which is a good sign of a credible witness.

With respect to urban design

The Tribunal should prefer the evidence of Pegah Fahimian over that of Andrea Sinclair.

Ms. Fahimian took the Tribunal through the relevant PPS, Region Official Plan, City Official Plan policies and Urban Design Guidelines in great detail to ensure that the Tribunal had considered each one. Her interpretation of these policies was logical and she considered the bigger picture.

When questioned by Ms. Meader in cross examination, Ms. Fahimian showed a willingness to consider Ms. Meader's questions with an open mind and change her own opinion where required, when presented with new information. In fact, at the start of her evidence Ms. Fahimian took the opportunity to point out errors in the headings of her Witness Statement.

To use one example, it is a fact that the applicant is proposing to reduce the rear yard setback to less than half of what the Zoning By-law requires. Ms. Fahimian says that cutting the rear yard setback in half results in a built form that is not appropriate, and explained why.

Ms. Sinclair says that cutting the rear yard setback, quote “*establishes a **generous** rear yard setback*” (page 60, WS compendium). When questioned on the use of the word generous, she refused to change her characterization. That is not the sign of a credible witness.

With respect to Cultural Heritage

The Tribunal should prefer the evidence of Ms. Choudhry over that of Mr. Currie. Put simply, Mr. Currie’s evidence on cultural heritage, and on the angular plane, doesn’t follow any sense of logic.

Guideline 6.9.4 states that the angular plane should be measured from the “rear property line”. Ms. Choudhry drew the angular plane from the rear property line of the Subject Property. Mr. Currie drew it from the front of someone else’s property on the far side of Roy St. When challenged, he did not change his opinion, unlike a reasonable, credible witness would have.

For 50 Weber St W, Mr. Currie originally drew the angular plane from across the street, and then revised it to draw it from the rear property line as it is supposed to be drawn. Whether he agrees with that or not, it is in his report which he signed and submitted to the City, forming a part of the public record. This inconsistency between his own signed work for 22 and 50 Weber St W. is not credible.

During her direct evidence and cross examination evidence, Ms. Choudhry was a very credible witness, taking the time to seriously consider questions by Ms. Meader, and asking to look over policy to verify the wording before providing her expert opinion evidence.

It is for all these reasons that the Tribunal should prefer Ms. Choudhry’s evidence.

6. Participant Statements

The Tribunal also must consider the Participant Statements that were filed. The Applicants did not address the participant statements in their evidence. They were not considered in the Applicant’s closing submissions or reply submissions, and it is not proper for the Applicant to add that analysis in its reply written submissions (if that is the intent) because the City will have no ability to assess this analysis which was never provided to the Tribunal. If the Applicant provides any analysis of the participant statements in written reply, it should be completely disregarded as improper.

Tribunal should in particular review the participant statements of Simon Euteneier who is the owner of 28 Weber St W and Cathryn Harris who is a tenant at 28 Weber.

7. Response to Applicant's Closing Submissions

Qualitative versus Quantitative Analysis: Ms. Meader referred to case law on minor variance hearings to say that the Tribunal needs to assess both qualitative and quantitative impacts of variances to a zoning by-law. Firstly, this is not a Minor Variance, and those cases are not relevant. It is also noted that Ms. Meader did not provide those cases in advance of the oral closing submissions (unlike FOBT, who did), which is improper.

The City agrees that the Tribunal needs to consider not just the numerical change from the regulation, but also the adverse impacts. Three City witnesses talked about the impacts resulting from the approval of this proposed development.

Ms. Meader's Incorrect Statement on Stepback: Ms. Meader claims there is a 2m stepback above the base of the building. To be clear: this is a recession that applies to one storey, not a stepback, and the UDM requires a 3m stepback for floors 2-19, not just the second storey.

Cumulative Impacts: Ms. Meader criticized the evidence of Ms. Fahimian who said that if this building is approved, it would set a bad precedent and would lead to cumulative impacts of other similar buildings being approved.

While Ms. Meader might not *like* Ms. Fahimian's evidence on this point, **the Applicant did not even bother to assess cumulative impacts**. When I asked Mr. Currie if he even considered cumulative impacts, he said no, and elaborated no further.

Cultural Heritage Impacts: Ms. Meader said that there are no impacts on cultural heritage. Ms. Choudhry provided extensive evidence on the impacts to cultural heritage.

If a 19 storey tower with deficient setback and no step back is considered appropriate in a Heritage Conservation District, why is it even designated? Why are there specific policies for Weber Street West if they do not need to be implemented by the Tribunal?

Case Law: Ms. Meader also took the Tribunal to case law regarding heritage conservation district plans. These cases are not related to a development in the District or even in the City of Kitchener. The entire intent of heritage conservation district plans are to recognize the *specific* heritage resources of a particular area. The City's lack of support for a 19 storey tower adjacent to four 2.5 storey residential dwellings in a District cannot be characterized as "mothballing", as implied by the Applicant.

50 Weber versus 22 Weber: Ms. Meader said that Ms. Choudhry took an inconsistent approach between 50 Weber St. W. and 22 Weber St. W. Instead, Ms. Choudhry supported different standards

for a building that is only 8 storeys and has step backs at 50 Weber St. W, versus a 19 storey tower with no step backs at 22 Weber St. W. It is understandable why her opinion was different on these files. It was Mr. Currie who flip-flopped regarding the angular plane between 22 and 50 Weber St. West.

8. Concluding Submissions

This development proposal does not fit on this site. It's too wide. It's too tall. It intrudes 14 storeys into the angular plane. Physical separation is not met, jeopardizing the ability of 18 and 28 Weber Street W to redevelop or expand and provide more housing. It provides literally no transition to the 2.5 storey buildings that surround it on three sides.

Another rhetorical question for the Tribunal to consider: how could this proposal offer **less** transition?

Ms. Fahimian opined that this proposal will impact the ability for 18 and 28 Weber St. W. to redevelop in the future either within their current zoning by leading to adverse impacts like privacy, overlook and visual impacts. It would also impact the ability for those landowners to develop beyond the zoning by-law to build a similar building, which is both unfair and bad planning.

On behalf of the City of Kitchener, the City submits that the Tribunal should refuse these Applications.

In refusing the Applications, the Tribunal is not shutting down the development of this site altogether. Someone will redevelop this property in the future, hopefully with a more reasonable proposal. The City supports redevelopment, but this proposal is an extreme overbuilt for this heritage conservation district, and the physical context of abutting 4 residential dwellings.

The Tribunal has heard from multiple witnesses from the City who have opined that the Applications:

- Are not consistent with the PPS 2024
- Do not conform to the Region OP
- Do not conform to the City OP
- Do not meet the wording or the intent of the UDM
- Do not meet the wording or the intent of the HCDP
- And is not good planning in the public interest.

Requested Relief

Based on the extensive evidence brought by the City, the City requests that the Tribunal refuse the appeal and **not** approve the Applications.