

Alex Ciccone
9 Norwich St. W
Guelph, ON N1H 2G8
Telephone: (519) 837-0500
aciccone@garrodpickfield.ca
File No: 12327

VIA ELECTRONIC MAIL

November 12, 2025

Ben Bath
Case Coordinator, Ontario Land Tribunal
Ben.Bath@Ontario.ca

Dear Mr. Bath:

**RE: Section 23 Request for Review
Decision and Order of Members Faghani and Ingram issued September 17, 2025
OLT Case No.: OLT-22-002377
Response from the City of Kitchener**

We are co-counsel to the City of Kitchener (“**City**”) for the above noted matter along with Katherine Hughes.

The City has received and reviewed the Request for Review of the decision of Members Faghani and Ingram issued September 17, 2025 (the “**Decision**”) by the Friends of Olde Berlin Town (“**FOBT**”) which was filed October 15, 2025 (the “**Request**”).

On October 29, 2025, the Ontario Land Tribunal (“**Tribunal**”) sent a letter addressed to the parties that in part directed the City to file a response to the Request by November 13, 2025.

City Position

The City agrees with the Request’s overall position that the Decision includes errors of law that, were they not made, would have resulted in a different outcome, and that the Tribunal’s Chair should set aside the Decision and order a re-hearing.

Rule 25.7 of the Tribunal’s Rules of Practice and Procedure (the “**Rules**”) provide that the Chair may only exercise his discretion and grant the request for review if certain conditions are met, iterated in this rule.

The City agrees with the Request’s submission that the Tribunal made errors of law such that the Tribunal would likely have reached a different decision as per Rule 25.7(c). Specifically, the City agrees with the Request that the Tribunal did not apply the required legal tests in considering the Civic Centre Neighbourhood Heritage District Conservation Plan (“**District Plan**”).

Incorrect Legal Tests

In paragraph 112 of the Decision the Tribunal concludes that the revised development proposal “*is consistent with the objectives of the District Plan*”. This is not the correct legal test.

The District Plan is a heritage conservation district plan passed pursuant to Part V of the *Ontario Heritage Act*, RSO 1990, c O 18.

Section 41.2(1)(b) of the Ontario Heritage Act prohibits municipalities from passing any by-law that is “*contrary to the objectives set out in the plan*”. The Tribunal is held to the same requirement when passing by-laws, including the zoning by-law amendment which was approved by the Decision.

The Tribunal did not apply this test in the Decision, and the City submits that the outcome of the Decision would have been different had the correct legal test been applied.

Dismissal of the Angular Plane and Creation of a New Test

At paragraphs 100 and 101 the Tribunal concludes that Dan Currie’s (the Applicant’s witness) interpretation of the applicable angular plane is incorrect and finds that the application does not meet the 45-degree angular plane. In fact, parts of the proposed development would exceed the angular plane by over 8 storeys; this is not a minor intrusion.

Despite this finding, the Tribunal incorrectly assigns no weight to the application’s failure to meet this metric, stating that the failure to meet this development standard does not matter as the application will have ‘no adverse impacts’ (according to the Applicant’s evidence). It is an error of law to completely ignore a numerical development standard.

The Tribunal further concludes in paragraph 102 that “*the intent of the [angular plane] has been met as there are no adverse impacts from not meeting the [angular plane]*”. This is not the applicable test. The District Plan does not state that only the ‘intent’ of policies must be met, and the District Plan does not set out an ‘adverse impacts’ test that replaces the need to meet the angular plane in policy 6.9.4. In fact, the phrase “adverse impacts” is never used in the District Plan.

The Tribunal’s failures in this regard represent two errors of law, and had the Tribunal not made these errors, the Application could not have been approved.

The City requests that the Chair exercise their discretion by rescinding the Decision and ordering a re-hearing of the matter.

Yours truly,



Alex Ciccone

Co-Counsel to the City of Kitchener

Cc:

Hal Jaeger and Neil Baarda
Representatives of FOBT
obtfriends@gmail.com

Jennifer Meader
Counsel to 30 Duke St Limited
jmeader@tmalaw.ca

Andy Gazzola
Counsel to the Region of Waterloo
AGazzola@regionofwaterloo.ca