

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)

RESPONSE TO REQUEST FOR REVIEW OF THE APPLICANT

DATE: November 27th, 2025

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TAB 1



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VIA EMAIL

November 27, 2025

Ontario Land Tribunal
655 Bay Street, 15th Floor
Toronto, ON M5G 1E5

Attention: Mr. Michael Kraljevic, OLT Chair

Dear Mr. Kraljevic:

**Re: Response to Request for Review of Tribunal Decision, filed by Friends of Olde Berlin Town
30 Duke Street Limited
OLT Case No. OLT-22-002377**

We represent 30 Duke Street Limited, the Applicant/Appellant and owner of the lands municipally known as 22 Weber Street (“**Subject Lands**”) in the City of Kitchener (“**City**”). As directed by the Tribunal, the Applicant makes these submissions in response to the Request for Review (“**Request**”) by Friends of Olde Berlin Town (“**FOBT**”), regarding the Decision of Members Faghani and Ingram, issued September 17, 2025 (“**Decision**”).¹

The Decision allowed the Applicant’s Official Plan Amendment and Zoning By-law Amendment appeals to facilitate the development of a 19-storey rental apartment building on the Subject Lands (“**Proposed Development**”).

Overview and Relief Sought

Rule 25.7 of the Tribunal’s Rules of Practice and Procedure (“**Rules**”) sets out that the Tribunal may only grant a request for review if the Chair is satisfied that the request raises a “convincing and compelling case” that the Tribunal acted outside of its jurisdiction, violated the rules of natural

¹ *30 Duke Street Limited v Kitchener (City)*, 2025 CanLII 96327 (ON LT) [“**Decision**”].

justice or procedural fairness, or made an error of law or fact such that the Tribunal would have likely reached a different decision had it not so erred.

The Applicant requests that FOBT's Request be denied as it has failed to demonstrate a "convincing and compelling case" on any of the above-noted grounds. As is further articulated below, FOBT's Request focuses on irrelevant details, takes passages out of context, and largely attempts to reargue its case, all of which is inappropriate in the context of a request for review.

The Applicant's submissions will make the following points:

- The Decision is not outside the jurisdiction of the Tribunal;
- The Tribunal did not violate the rules of natural justice or procedural fairness;
- The Tribunal did not err in law with respect to the test for compatibility;
- The Tribunal did not err in law with respect to the analysis of the objectives of the Heritage District Plan;
- The Tribunal made no errors of fact, at all, let alone any that would have caused the Tribunal to come to a different outcome; and
- FOBT's requested remedies are inappropriate and not within the jurisdiction of the Chair.

No Jurisdictional Issues

The Tribunal did not act outside of its jurisdiction by finding that height was not regulated in the by-law. It did not, as alleged by FOBT, exert its own preferences over how a height limit should be expressed.

The manner in which height is regulated in the by-law was not a key determinant in the Decision. Instead, the Tribunal conducted an analysis of the potential impacts of the proposed building height. It was entirely the Tribunal's jurisdiction to do so.

Brigade Holdings Corporation and Vive Development Corporation et al. v Kitchener (City),² cited by FOBT, turns on the question of whether parts of a municipality's by-law regulated minimum or maximum height with respect to buildings and structures within a Major Transit Station Area and, accordingly, whether they were protected from appeal pursuant to subsections 34(19.5) and (19.6)

² [2024 CanLII 126182 \(ON LT\)](#).

of the *Planning Act*.³ This case does not stand for the general proposition that the Tribunal does not have the jurisdiction to comment on or make a finding about whether height is restricted by any given by-law.

No Violation of the Rules of Natural Justice or Procedural Fairness

The Applicant strenuously disagrees that the Tribunal violated the rules of natural justice or procedural fairness.

Well before the hearing, during a Case Management Conference held on October 30, 2024, the Tribunal determined that the Subject Property was specifically exempt from OPA 49 and from amendments to the City's new zoning by-law ("**ZBL**").⁴ The Tribunal ordered that any issues related to those instruments were to be struck from the Issues List.⁵ The Tribunal held that OPA 49 "has no relevance to this matter."⁶ This decision of the Tribunal was not reviewed or appealed by any party.

During FOBT's opening statement, it stated the Proposed Development should be evaluated against the surrounding properties which are subject to OPA 49 and the ZBL.⁷ FOBT asked the Applicant's witness, Ms. Sinclair, about the current zoning on the lands across the street on the south side of Weber Street.⁸ FOBT also asked its witness, Mr. Barton, to opine on the City's studies underlying OPA 49 and the ZBL.⁹ In response to objections from the Applicant, the Tribunal ruled twice that OPA 49 and the ZBL were not relevant to the appeal.¹⁰ Accordingly, the Tribunal ordered Mr. Barton to limit his oral evidence to the parts of his Witness Statement that addressed the policy regime in place at the time the application was submitted.¹¹

There is nothing procedurally unfair about the Tribunal's rulings. Each party had an opportunity to be heard, the Tribunal deliberated and issued not one but three rulings on the issue of the relevance of OPA 49 and the ZBL.¹² FOBT's repeated reference to irrelevant issues, despite the Tribunal order, was

³*Brigade Holdings Corporation and Vive Development Corporation et al. v Kitchener (City)*, 2024 CanLII 126182 (ON LT) at [para 40](#).

⁴ *30 Duke Street Limited v Kitchener (City)*, [2024 CanLII 118331](#) (ON LT) ["**CMC Decision**"]

⁵ CMC Decision at [para 12](#).

⁶ CMC Decision at [para 12](#).

⁷ Affidavit of Jessica De Marinis, dated November 24, 2025 ["**De Marinis Affidavit**"], at para 4.

⁸ De Marinis Affidavit at para 7.

⁹ De Marinis Affidavit at para 11.

¹⁰ De Marinis Affidavit at para 15.

¹¹ De Marinis Affidavit at paras 15 and 16.

¹² See CMC Decision at [para 12](#); De Marinis Affidavit at paras 10 and 15.

delaying and interrupting the hearing. The Tribunal was well within its jurisdiction to make orders that it considered proper to prevent abuse of process.¹³

As set out in the *Statutory Powers Procedures Act* and the Tribunal's Rules, the Tribunal is the master of its own practice and procedure.¹⁴ In *Pickering Developments Inc v Ajax (Town)*,¹⁵ the Tribunal's predecessor found that its powers can be used to control the questioning of witnesses:

The Tribunal finds that the *SPPA* and the Rules confer the power on the Tribunal to control the process of an individual hearing and in doing so, to limit the time available for examination of a witness in order to ensure a fair and efficient hearing takes place. The most important consideration in the application of the *SPPA* and the Rules in this context is the fairness of the hearing process.¹⁶

Further, in limiting FOBT's right to question the City's expert witnesses to questions of clarification only, the Tribunal was appropriately and properly exercising its jurisdiction to control its own process, as set out in section 23(2) of the *Statutory Powers Procedure Act*:¹⁷

Limitation on Cross Examination

23 (2) A tribunal may reasonably limit further examination or cross-examination of a witness where it is satisfied that the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the proceeding.

In this respect, the Tribunal's restriction on the nature of FOBT's questioning was entirely appropriate and procedurally fair.

FOBT relies on *Pintea v Johns*¹⁸ and *Girao v Cunningham*¹⁹ to argue that self-represented litigants are entitled to flexibility on procedure and the rules of evidence. FOBT misrepresents what these cases stand for. *Pintea* and *Girao* say that decision-makers have an obligation to ensure that self-represented litigants understand the process and to provide information about the law and

¹³ RSO 1990, c S 22 [“*SPPA*”], [s 23\(1\)](#).

¹⁴ *SPPA*, [s 25.0.1](#).

¹⁵ [2018 CanLII 82024](#) (ON LPAT).

¹⁶ *Pickering Developments Inc. v Ajax (Town)*, 2018 CanLII 82024 (ON LPAT) at [para 27](#).

¹⁷ *SPPA*, [s 23\(2\)](#).

¹⁸ [2017 SCC 23](#).

¹⁹ [2020 ONCA 260](#) [“*Girao*”].

evidentiary requirements.²⁰ The same rules of evidence and process apply to all parties whether represented by counsel or self-represented.²¹

The Tribunal in this case exemplified and embodied these principles. The Tribunal provided FOBT with appropriate information and guidance with respect to the rules of evidence, the legal tests, and process,²² while ensuring fairness for all parties.²³

No Error on Compatibility and Adverse Impacts

The Tribunal made no error of law with respect to its analysis of compatibility. FOBT alleges that the Tribunal erred in failing to consider whether the Proposed Development was “mutually tolerant” and “capable of existing in harmony.” As paragraph 51 of the decision, the Tribunal correctly sets out the definition of compatibility as follows:

Land uses and building forms that are mutually tolerant and capable of existing together in harmony within an area without causing unacceptable adverse effect, adverse environmental impacts or adverse impacts. Compatibility or compatible should not be narrowly interpreted to mean “the same as” or even “being similar to”

The Tribunal noted that the while this definition includes “existing together in harmony,” the more important aspect of the definition is “without causing unacceptable adverse effects” because it is the impacts from those effects that need to be analyzed.²⁴

The emphasis on the adverse impacts element of the definition is well established in Tribunal jurisprudence. In *Keewatin (Town) Zoning By-law 94-013*, the predecessor of this Tribunal held, “[i]n the view of the Board, as it has repeatedly stated in the past, compatibility turns upon the impact of the proposal on the character of the environment, both built and natural.”²⁵ Put another way, unacceptable adverse impact is a “significant consideration of compatibility.”²⁶ This Tribunal has also held that compatible means “the ability to co-exist without unacceptable adverse impacts of one upon the other.”²⁷

²⁰ *Girao* at [para 149](#).

²¹ *Girao* at [para 151](#).

²² De Marinis Affidavit at para 16.

²³ *Girao* at [para 151](#).

²⁴ Decision at [para 56](#).

²⁵ *Keewatin (Town) Zoning By-law No 94-013 (Re)*, [1996] OMBD No 31 at para 21 [emphasis added] (attached at Tab 2).

²⁶ *T Valeri Construction Ltd. v Hamilton (City)*, 2022 CanLII 3289 (ONLT) at [para 92](#).

²⁷ *Oasis Townhomes On Lawrence Inc. v Toronto (City)*, 2019 LNONLPAT 1410 at para 34 (attached at Tab 3).

FOBT would have the Tribunal conduct an overly formulaic and granular analysis of compatibility that is not supported by case law. Administrative decision makers are not required to respond to every argument, or to make an explicit finding on each constituent element leading to its final conclusion.²⁸ The Tribunal is required to meaningfully grapple with the key issues and central arguments.²⁹ That is what the Tribunal did here. FOBT fails to raise a “convincing and compelling” case that the Tribunal erred with respect to compatibility.

No Error on Analysis of the Objectives of Heritage District Plan

The Tribunal applied the correct test with respect to the Heritage District Plan (“HDP”). The Proposal must be evaluated against the objectives of the District Plan. Section 41.2 of the *Ontario Heritage Act* sets out as follows:

Consistency with heritage conservation district plan

41.2(1) Despite any other general or special Act, if a heritage conservation district plan is in effect in a municipality, the council of the municipality shall not,

(a) carry out any public work in the district that is contrary to the objectives set out in the plan; or

(b) pass a by-law for any purposes that is contrary to the objectives set out in the plan.³⁰

With respect to the HDP guidelines, it is well-established that guidelines are not policy and they do not carry the same weight as policy.³¹ Strict adherence to guidelines is not required; meeting the intent of the guideline is preferred, based on a holistic and contextual analysis.³² As set out in *The Junction Heritage Conservation District v Toronto (City)*:

*... guidelines are not predetermined mandatory performance standards, but instead should be assessed through a holistic assessment that looks at broader considerations of context, fit, and a fulsome analysis of impacts.*³³

²⁸ *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at [paras 127-128](#).

²⁹ *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at [paras 127-128](#).

³⁰ *Ontario Heritage Act*, RSO 1990, c O18, [s 41.2\(1\)](#) [emphasis added].

³¹ *The Junction Heritage Conservation District v Toronto (City)*, 2019 CanLII 117334 (ON LPAT) at [para 59](#); *Bel-East Corp and Bel Ontario Inc v Toronto (City)*, 2016 CanLII 82339 at [para 30](#), and *Bertone Montreal Road LP v Ottawa (City)*, 2023 CanLII 64021 (ON LT) at [para 78](#).

³² *The Junction Heritage Conservation District v Toronto (City)*, 2019 CanLII 117334 (ON LPAT) at [para 45](#).

³³ *The Junction Heritage Conservation District v Toronto (City)*, 2019 CanLII 117334 (ON LPAT) at [para 45](#). [emphasis added].

Where guidelines have not been met to the letter, this Tribunal is correct to accept a rationale that explains how the intent of the guideline is met.³⁴

With respect to the angular plan analysis, this is specifically the exercise conducted by the Tribunal:³⁵

... even if the proposed building does not meet the 45-degree angular plan, the language of “feasible” and the suggestion to “minimize visual impacts” within the [angular plan guideline] suggests that the key consideration is what impact will occur if the 45-degree angular plan is not met. In this case, Mr. Currie was quite clear that there is no adverse impact. No impact from shadows (as provided by the Shadow Study) and no impact on heritage resources, as discussed earlier. Ms. Choudry did not provide adequate evidence of adverse impacts. As such, the Tribunal finds the intent of the [angular plan guideline] has been met ...

In preferring overall the evidence of Mr. Currie and rejecting the evidence of Ms. Choudry, the Tribunal conducted a thorough and thoughtful analysis of the objectives of the HDP and the impacts to surrounding cultural heritage resources. The Tribunal did not err in law in this exercise.

With respect to FOBT’s objections about InfoSheet #5, the Tribunal finds that it is a “helpful tool”³⁶ but it does not rely on it as a substitute to a fulsome evaluation. The Tribunal notes that FOBT did not identify any concerns in cross-examination of Mr. Currie about incorporating this into his evidence.³⁷

No Errors of Fact

FOBT fails to raise any errors of facts, at all, and certainly not any that meet the threshold of a “convincing and compelling” case that the Tribunal would have likely reached a different decision had it not so erred. This Tribunal has held that meeting this threshold requires misstatements of evidence or unexplained findings that cause “profound uncertainty” about the overall conclusion of the Tribunal.³⁸ In identifying alleged factual errors, FOBT has instead engaged in a “cherry-picking” exercise and has taken passages of the Decision out of context. FOBT fails to raise any “convincing and compelling” points that the Tribunal erred or made findings that result in profound uncertainty.

In particular:

³⁴ *The Junction Heritage Conservation District v Toronto (City)*, 2019 CanLII 117334 (ON LPAT) at [para 60](#).

³⁵ Decision at [para 108](#).

³⁶ Decision at [para 90](#).

³⁷ Decision at [para 90](#).

³⁸ *536555 Ontario Ltd & Emros Developments Corp v Ottawa (City)*, 2025 CanLII 27425 at [para 43](#).

- **No misrepresentation of Ms. Sinclair’s evidence.** It is not an error of fact, or a misrepresentation,³⁹ for the Decision to summarize the evidence before the Tribunal. While not repeating verbatim Ms. Sinclair’s evidence on Maximum Floor Space Ratio, which is not required or desirable, the Tribunal accurately captured the nuance of her testimony. FOBT has failed to articulate how articulation of the entirety of Ms. Sinclair’s evidence would have led to a different outcome.
- **No incomplete findings on adverse impacts.** The Tribunal did not err in fact, or decide on the basis of an incorrect premise, with respect to its findings on the Urban Design Manual (“UDM”). The Tribunal accepted Ms. Sinclair’s evidence that the Proposed Development meets the intent of the UDM, which is the appropriate legal test. “Hinderance of sky views,” “enclosed streetscape,” and “overwhelming scale”⁴⁰ are not identified in the definition of adverse impacts in the City’s Official Plan. The Tribunal’s analysis is not incomplete in this regard.
- **No error with respect to intention for high density.** The Tribunal did not err in fact with respect to its finding that the Subject Lands were intended for high density. The Subject Lands are designated “High Density Commercial Residential” in the Secondary Plan.⁴¹ Despite the Heritage District Plan’s recommendation for medium density, noted at paragraph 89 of FOBT’s response, the City ultimately declined to amend the zoning to align with this recommendation. The Tribunal made no error.
- **No error on setback.** The Tribunal did not err in fact in its finding that 14 metres was appropriate. The Tribunal accepted Mr. Currie’s evidence that the rear yard setback was generally in keeping with the guidelines of the HCD, and importantly that there were no adverse impacts to the HCD as result of the Proposed Development. The Tribunal made no error with respect to s 41.2(2) of the *Ontario Heritage Act*, and did not imply that the zoning could be reduced because of the HDP. The Tribunal carefully considered the evidence presented in terms of what the impacts of a reduced rear yard setback would be.
- **No error on height regulation in the by-law.** Whether height was regulated in the by-law was not a key determinant in the Decision. Regardless of the building height proposed, the Tribunal needed to conduct an analysis of the potential impacts as a result of that building

³⁹ FOBT’s Request for Review at para 79.

⁴⁰ FOBT Request for Review at para 85.

⁴¹ Decision at [para 39](#).

height. This is exactly what the Tribunal did. It determined that there were not any adverse impacts. FOBT fails to identify how height being directly regulated by the by-law would have led the Tribunal to undergo a different analysis.

- **No error regarding future proposals.** The Tribunal did not err or contradict itself with respect to consideration of future proposals. The Tribunal correctly noted that each future development application will be evaluated based on its own unique circumstances. The Tribunal found the City's argument regarding bad precedent to be unpersuasive. The Tribunal further correctly engages in consideration of *prior* approvals, such as those on the opposite side of Weber St.⁴² This is not an error of fact, as alleged by FOBT. It is an evaluation of the character of the area.

Requested Remedies Inappropriate and Overreaching

The granting of requests or review is a rare and extraordinary remedy. In the extraordinary cases where the Tribunal grants a request for review, the relief ordered is the rehearing of the proceeding or portions of the proceeding, as contemplated in Rules 25.7, 25.8 and 25.10.

FOBT's Request asks that the Decision be reversed, without a rehearing, or that the Decision be altered according to the FOBT's suggested amendments, which effectively amounts to a reversal of the Decision. It would be highly unusual, and not contemplated in the Tribunal's Rules, for the Tribunal to grant remedies of this nature. Further granting these remedies without a rehearing would give rise to serious procedural fairness concerns.

The Applicant submits that FOBT's Request does not warrant this rare and extraordinary remedy and should be dismissed.

All of which is respectfully submitted,



Jennifer Meader

⁴² Decision at [para 67](#).

TAB 2

Kewatin (Town) Zoning By-law No. 94-013 (Re)

Ontario Local Planning Appeal Tribunal Decisions (f/k/a Ontario Municipal Board)

Ontario Municipal Board

N.M. Katary

January 18, 1996

File No. R 940277

[1996] O.M.B.D. No. 31 | 33 O.M.B.R. 293

Eric and Janet Ringstrom, Frances A. and Harold D. Latter, Eileen M. and William L. Palk and others have appealed to the Ontario Municipal Board under subsection 34(19) of the Planning Act, R.S.O. 1990, c. P.13 against Zoning By-law 94- 013 of the Town of Keewatin

(16 pp.)

COUNSEL:

R. Seller, for Eric and Janet Ringstrom, Frances A. and Harold D. Latter, Eileen M. and William L. Palk and others.
D.F. MacDonell, for Sun Crest Suites.

Update Week 96-4

Planning

DECISION OF THE BOARD delivered by N.M. KATARY:--

1 The principal issue is whether or not nine [9] freehold street townhouses built to contemporary standards are compatible with the existing single detached dwellings in the neighbourhood? Both parties agreed that conformity with Section 2.1.3.3 was the dispute before the Board.

2 The subject property consists of Lots 14, 15, 16 and Part of Lots 17 & 18 of Registered Plan 59. It is bounded on the North by Highway 17, on the west by the unopened road allowance 13th Street [also known as May Avenue], on the south by St. Clair Street and on the east by property owned by Latter and Palk [Lots 5, 6, 7 & 8] which contains the road extension of St. Clair Street to the 14th Street. It is approximately 0.25 ha. [26,869 sq.ft.] in size.

3 The subject property is currently zoned Residential 1st Density - R1 and the amendment rezones it to Residential 3rd Density - R3 with several site specific exemptions in order to permit nine street townhouses.

4 Mr. Joseph E. Sniezek, a land use planner with approximately twenty-three [23] years of experience, gave evidence in opposition to the by-law.

5 The following five residents of the relevant neighbourhood also gave evidence in opposition to the by-law amendment: Mr. William L. Palk; Mr. Raymond D. Pearson; Mr. Torrance C. Brydges; Mrs. Lorraine M. Griffiths; and Mr. George Aldous.

6 The following people gave evidence in support of the by-law amendment: Mr. John Conlin, an engineering and planning consultant with approximately thirty [30] years of experience; Mr. Stephen Campbell, the principal of

Kewatin (Town) Zoning By-law No. 94-013 (Re)

Channel Technical Services, a company which studies watershed patterns; Mr. Richard S. Tebinka, a transportation engineering consultant with approximately fourteen [14] years of experience; and Mr. Murray Ratuski, the applicant.

7 The subject property is designated Urban Residential in the Kenora-Keewatin Official Plan. This designation permits a full range of residential densities. New low density development is permitted throughout the Urban Residential designation, as of right, while new medium and high density developments are permitted only through site specific rezonings, if they meet the criteria set out in the official plan. In this instance, the proposal results in a density of approximately 36.1 units per net hectare and falls within the range of Medium Density defined in the official plan. The proposal, therefore, requires a rezoning under Section 2.1.3.3 of the official plan which is reproduced below for ease of following the analysis of evidence:

2.1.3.3 Medium Density Development

Only existing medium density residential developments will be recognized in the implementing Zoning By-laws. New medium density residential developments may be considered subject to the following criteria:

- a) new buildings are compatible in terms of scale and character with surrounding uses and buildings;
- b) the site is preferably located at the corner of two streets or abutting buildings of similar scale;
- c) the increased density and building form does not constitute an intrusion into a lower density residential area; and
- d) amenity space and parking, including adequate space for vehicular movement are contained on site.

8 Using a map [Ex.7] prepared by him, the planner for the appellants stated that the relevant neighbourhood for analysis of impact consisted of seasonal and permanent dwellings south of Highway 17, west of the bridge up to the intersection of the extended Bay Street with Highway 17 and north of the Lake of the Woods. It was his view that these bounds created a natural self contained neighbourhood. The neighbourhood contains twelve permanent dwellings [including one on the subject property which is slated for demolition if the by-law amendment is approved] and six seasonal dwellings. The houses are of varying age with a diversity of facades. Most of the houses are single storey in height and are below the tree canopy of adjacent trees. The current density in this neighbourhood is approximately 1.96 units per hectare [0.79 units per acre]. These facts were not contested. The dispute is whether or not the proposed townhouses are compatible with this existing built form.

9 Using a document book [Ex.8] of photographs with descriptive notes, one of the appellants, Mr. Palk, [a retired solicitor whose seasonal residence is south of the subject property] outlined in fascinating detail the history of the dwellings that are in the neighbourhood. He concluded his remarks by stating:

The proposed development is not compatible in terms of scale and character of existing single family residences that make up the immediate area. The increased density constitutes an intrusion in the low density area and will depreciate the value of properties. The existing roads in the area [14th Street, St. Clair Street and Keewatin Beach Road] have steep grades, several blind corners and/or curves which make them dangerous and the increased traffic caused by the proposal will aggravate the problems caused by existing road conditions. Our small community will be detrimentally affected if the proposed development were to proceed.

During cross examination he stated that "I live here generally between mid April to the first week of October and winter in the American South. From the project site to the lake the land is steep. Looking up from my cottage, I do not see anything because of the slope and the mature trees."

Kewatin (Town) Zoning By-law No. 94-013 (Re)

10 Mr. Raymond Pearson, whose permanent residence is adjacent to the subject property on the west, was of the opinion that the proposal was not compatible with existing development for the following two reasons. First, the proposed nine dwellings would add traffic to the neighbourhood and diminish the country-style living that he and others had chosen. Second, the proposed scale of development would occupy most of the land and therefore, would not fit in well with the single detached dwellings.

11 Mr. Torrance Brydges, one of the appellants whose property is at the southeast corner of "what in effect is the T-intersection of 14th Street with Highway 17", was concerned about the proposal not being compatible with the neighbourhood although the principal issue for him was the intersection. He stated that "we in this neighbourhood are a community within a community and live in single family homes. This development will be visible from all points." During cross examination, he admitted that "I agree that five single family homes can be built now but nine is greater than five."

12 Mrs. Lorraine M. Griffiths, one of the appellants whose property fronts on St. Clair Street and is west of the Pearson property and a member of the Town Council when the Zoning By-law amendment was passed, stated that the townhouses were not compatible with the neighbourhood because "the townhouses are going to be overpowering and overwhelming. Now, everything else fits in because they are single family homes."

13 During cross examination she stated, "When the amendment was passed there was no site plan and I have not seen any site plan since. There may be one now. The land drops off quite a bit from St. Clair Street to the lake and I cannot see much of the Aldous house which is in front of us. May be, he cannot see us up here because of the trees and the rising ground."

14 The planner for the appellants pointed out that the relevant neighbourhood is approximately 9.1 ha. [22.65 ac.] in size with the current density being approximately 1.96 units per hectare-uph [0.79 units per acre-upa]. He stated that the introduction of nine townhouses would increase the density to 2.85 uph which represented an increase of approximately 44 percent. He did not indicate what the density would be with five single detached dwellings that could be built without any amendment to the by-law. His main contention was that in a neighbourhood where there are only single detached dwellings, introduction of townhouses would axiomatically make them incompatible. He maintained, therefore, that the proposal did not meet the intent of Subsections 2.1.3.3 (a) and (c) of the official plan.

15 The planner for the appellants also stated that the proposal does not meet the intent of Subsection 2.1.3.3 (b) because it is not located at the intersection of two streets due to the fact that 13th Street [also called May Avenue] is an unopened road allowance and also because of the fact that the subject site "does not abut buildings of a similar scale in terms of height, coverage, bulk or type." He stated further that there is precious little amenity space and no play space and therefore, the proposal did not meet the intent of Subsection 2.1.3.3 (d). In light of these reasons, he contended that the proposal does not conform to the official plan.

16 The planner for the applicant, on the other hand, contended that the most appropriate basis for comparison of densities was to compare five additional single detached dwellings which are permitted as a matter of right with nine townhouse dwellings. It was his view that the difference of four additional townhouses did not cause a significant increase in density and therefore he stated that the increase in density was insignificant. He described in some detail the vegetation and topographic features of the neighbourhood and stated, "the visual impact on the neighbours is negligible because they cannot see much of the townhouse building. The existing 14th Street in the east and St. Clair Street in the south and the proposed 13th Street in the west act as buffers and mitigate any impact upon properties in the vicinity. The nine street townhouses will be a larger building than single detached houses but because of the features that I have outlined to you, it will not stick out like a sore thumb in this particular neighbourhood. The height of the building will be very similar to the height of two storey houses making it compatible." He concluded his evidence on this point by stating that the proposal therefore met the intent of Subsections (a) and (c).

17 The planner for the applicant stated that with the construction of 13th Street, as proposed in the site plan, the

Kewatin (Town) Zoning By-law No. 94-013 (Re)

criterion of being at an intersection was met. He also stated that the height of the townhouses being no more than two storeys would be identical to several houses in the neighbourhood and that the proposed street townhouses are no different than single detached dwellings in principle although they are attached to each other in a row. In a forthright manner he did state that the townhouses by their very nature have greater coverage and bulk. His main point was that Subsection (b) states only a preference and does not require that a proposal shall be at an intersection and shall abut buildings of similar scale and therefore, the proposal met the intent of this Subsection of the official plan.

18 Using a site plan [Ex.16], the planner for the applicant pointed out the amenity area provided for each townhouse by way of a generous deck although he admitted that there was no play area on the site. He justified the absence of play area by stating "this whole design is meant for elderly couples some of whom may be 'snow birds' who go south during Winter. We did not see any point in providing play space for children when the intent is to market it to elderly couples." He described in detail how each townhouse would have an attached garage and a paved area in front that could be used for on site parking by guests. He described the circulation pattern by pointing out how the proposed 13th Street would be adequate for entry and exit from the townhouses. Based upon these design elements, he stated that the proposal met the intent of Subsection (d).

19 An analysis of evidence under the contested Section 2.1.3.3 is incomplete unless the structure of the official plan as a whole is considered. Sections 1.5.3; 1.5.6; 2.1.1; 2.1.2; 2.1.3.1; 2.1.4; 2.2.3.1; and 3.4.1 give guidance in assessing the context for Section 2.1.3.3. Section 1.5.6, one of the bases of the plan categorically states:

Efficient land use will be encouraged throughout the Planning Area and especially in existing built up areas. This will counteract the tendency towards outward sprawl and scattered development in favour of residential, commercial, institutional and industrial infilling.

20 The subject property is in the midst of existing residential use and hard services are available to it thereby fulfilling one of the founding premises of the plan. The uncontradicted evidence is that each of the townhouse units is likely to be marketed at the "\$200,000 range" in the words of the developer, Mr. Ratuski. An assessment of the market value of existing houses in the neighbourhood [Ex.7] shows that the average value of the fourteen houses for which the market value is shown comes out to be approximately \$173,000. There is no evidence to show that the market value of any of the existing single detached dwellings would be in any way adversely affected by the proposed large [1,800 to 2,000 sq.ft.] townhouses. Given the topography and vegetation of the neighbourhood, the townhouse building will not be visually prominent, as two of the objectors pointed out in a very candid fashion under cross examination. The townhouses are different from the single detached dwellings, of course! The question, however is, is it different enough to be incompatible?

21 In the view of the Board, as it has repeatedly stated in the past, compatibility turns upon the impact of the proposal on the character of the environment, both built and natural, with due regard for how that character is likely to evolve in the foreseeable future. Being compatible with is not the same as being the same as. Being compatible with is not even the same thing as being similar to. Being similar to means having a resemblance to another thing; they are like one another, but not identical. Being compatible with means being mutually tolerant and capable of coexisting together in harmony in the same area. In the final analysis, the proposal should not cause an unacceptable adverse impact upon existing built and natural environments.

22 Based upon an analysis of all of the pertinent evidence, the Board finds that the proposal will not cause an unacceptable adverse impact upon the existing built and natural environments and, therefore, is compatible with the existing environment.

23 The planner for the appellants set forth at length why the proposed zoning by-law amendment was inappropriate for the site. He described the seven site specific exemptions from the standards and stated that the combined variances were 39.6 percent, although he did not clarify how the variances could be added up when examining impact caused by different variances with very different impacts. He stated that "the variances with respect to coverage, rear yard, front yard and balcony projection detrimentally affect surrounding properties. I have not seen a detailed site plan showing mitigation measures." Using some standards recommended by the Ministry of

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Municipal Affairs and the Central Mortgage and Housing Corporation, he pointed out how the proposal does not meet them. He described the site specific exemptions provided in two other instances, namely, McLean and Lakeview Villas, and stated that the exemptions granted there were not as numerous as those proposed in this instance.

24 The planner for the applicant went over the by-law amendment including the seven exemptions and indicated how the exemptions did not violate the intent of the zoning by-law. He stated that "the front and rear yard reductions are necessary in order to provide an attached garage which is a very desirable feature in our climate. What we did was a trade-off between front and rear yards vs. enclosed attached garage. The lot coverage increased because of the large size of the dwelling units and the market seems to absorb large size units better. The developer has already told you that. Lot area reduction has no impact in a townhouse development such as this. Increasing the balcony projection by approximately four feet [1.31 m. = 4.2 ft.] beyond what is permitted in the east does not affect anyone because there is no house immediately to the east and as you heard from Mr. Palk, they [Palk & Latter] have no plan to develop their property in the near future." His main point was that the exemptions were necessitated by the design and they had negligible adverse impact upon properties in the vicinity, either individually or collectively and therefore the proposal met the intent of the by-law.

25 In the view of the Board, a zoning by-law details some land use policies and programs in an official plan through a series of regulations including specific qualitative and quantitative standards. In doing so, a zoning by-law attempts to implement an official plan in a reactive regulatory fashion. The intent and purpose of a zoning by-law as a whole, among other things, is to bring about a coordinated and efficient pattern of physical development that can facilitate the adequate provision of infrastructure, and community facilities and services such as transportation; communication; water; sewerage; electricity; gas; housing; arts; culture and recreation; open space; athletics and sports; public administration; libraries; fire fighting; waste treatment; education; health and other requirements.

26 At the heart of the zoning by-law is the idea of consistency in applying regulations and standards to any physical development proposal which attempts to either conserve, rehabilitate, redevelop, or newly develop a part of the community. A desire for consistency and predictability does not mean a rigid adherence to a zoning by-law however well conceived and executed. Zoning by-laws, by definition, are based upon a set of circumstances at the time of their formulation. As circumstances change, established regulations and standards need to be reassessed in light of new conditions and be interpreted and implemented in an adaptive manner.

27 In this instance, what is before the Board is a site specific zoning by-law amendment with seven exemptions from the standards of the parent by-law. To argue against an amendment based upon the standards contained in the document that is being amended is tantamount to circular reasoning. The crucial test for an amendment is not the quantitative standards but the intent. The intent in this instance, as both planners stated, is the maintenance and enhancement of quality of the environment - both built and natural.

28 The Board, therefore, prefers the evidence by the planner for the applicant and finds that the proposed seven site specific exemptions do not violate the intent of the parent by-law.

29 Based upon an analysis of pertinent evidence, the Board finds that the proposed development and the zoning by-law amendment conform to the official plan.

30 The second issue in this case is the adequacy of existing local street - 14th-St. Clair - and the intersections of this street with Highway 17, both at the west and the east.

31 Mr. Raymond Pearson, whose permanent residence is adjacent to the subject property on the west, was of the opinion that the proposal would aggravate current traffic problems. He stated that there were problems with the flow of traffic at present on the 14th Street-St. Clair Street, a substandard local street which collects traffic from the neighbourhood and channels it west and east to Highway 17. He stated that "14th Street is steep in places and winds around a lot. 99 out of 100 who want to go to Kenora [in the east], first travel west on this street and make a

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right turn on Highway 17 because of the dangerous intersection of 14th Street with Highway 17. You should not add more traffic to this already poor road."

32 Under some careful cross examination, Mr. Pearson stated "The road [east-west 14th-St Clair] is now maintained year round by the Town and I have never called them to complain because they do a pretty good job of maintaining the gravel surface with graders and they snow plough and sand the road in Winter."

33 During reexamination by the counsel for the appellants, Mr. Pearson stated that, "I do not prefer making the 14th Street one way going west because when you have a trailer, it is easier to go east on 14th to Highway 17 and make a right turn. The intersection of St. Clair with 17 may be better than 14 with 17, it is still difficult to make a right turn at St. Clair and 17 because of the sharp turn. I am also very concerned about the people using Keewatin Beach Road [connecting] to St. Clair [connecting] to 14th Street and going east to Kenora. The Board had difficulty reconciling his earlier statement about 99 percent of people using 14th and St. Clair going west first and then turning right on Highway 17 to go east because of the difficult intersection of 14th Street with Highway 17 and requested him to clarify the contradiction. Mr. Pearson answered, "I guess the people living west of me would go west and four houses to the east probably go east. That is what I meant by 99 percent."

34 Mr. Torrance Brydges, one of the appellants whose property is at the southeast corner of "what in effect is the T-intersection of 14th Street with Highway 17", was concerned about the substandard intersection of 14th Street with Highway 17. He described the inadequacy of sight lines at the intersection for anyone exiting from 14th Street onto Highway 17 and the difficulty of making a left turn onto 14th Street from Highway 17. In a picturesque manner he outlined how the Y-intersection created by Highway 17 and the road going into the settlement of Keewatin is a problem. He stated, "a person travelling west on Highway 17 signals a left turn, the driver in the rear thinks that the driver ahead is taking the Y-curve left on Highway 17 and not attempting to make a left onto the 14th Street until the driver in the rear sees the tail lights of the car ahead of him at the last minute."

35 During some rigorous cross examination, the counsel for the applicant, showed a map indicating the current driveway from his house to Highway 17 which meets the Highway adjacent to 14th Street, and asked him whether he and his wife ever use 14th Street. He replied, "we both work in Kenora. We do not use the 14th Street much."

36 Mrs. Lorraine M. Griffiths, one of the appellants whose property fronts on St. Clair Street and is west of the Pearson property and a member of the Town Council when the Zoning By-law amendment was passed, stated that she had a major concern with the substandard condition of the east-west St. Clair-14th Street which serves the neighbourhood. She stated:

I agree with everything that Mr. Palk, Mr. Pearson and Mr. Brydges have said about the condition of the road. The road is narrow and steep at times. My husband drives a heavy truck and we know how bad the road is. During Winter my husband and I go west on St. Clair and turn right on 17 to go east. I know that the majority of people go east on St. Clair and 14th and turn right at 17 to go to Kenora.

During cross examination she stated, "My husband drives a truck which is thirty five to forty [35-40] feet long and hauls twenty-three [23] cords of wood every time. He is a careful driver and has not had any serious problems with the road so far."

37 The land use planner for the appellants was of the opinion that the proposal should not be approved because it was likely to exacerbate the existing problems with respect to flow of traffic on the 14th-St. Clair, the local street serving the neighbourhood and on the turning movements at both the east and west intersection of this street with Highway 17. He stated:

In the case of 14th Street the sight line distance appears to be extremely tight 57 m. [187 ft.] in a westerly direction. In addition the grade from the subject site down 14th-St. Clair averages approximately 8 percent which means that in some sections the actual grade is 10.5 percent. In the case of St. Clair, the access [to Highway 17] is at an extreme angle and is partially obstructed by a rock out crop. The sightline to the east is 160 m. [524 ft.].

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Mr. Richard S. Trebinka, a transportation engineer with approximately twenty-four [24] years of experience, went through his report [Ex.22] in detail and stated:

The current maximum traffic volume with 14th-St. Clair being two way local street is 135 vehicles per day [vpd] and this volume will go up to 185 vpd on St. Clair south of Highway 17 if 14th Street is made one way. Four single family units would increase the maximum traffic to 220 vpd. Nine townhouses would result in a maximum forecast traffic volume of 240 vpd, an increase of 20 vpd compared to single family units. The traffic volumes forecast are well below the accepted guideline of 1,000 vpd for a local street.

I looked at the standards for the intersection of St. Clair with Highway 17. The acceptable range for the angle of intersection is between 70 to 90 degrees, although 90 degrees is the ideal. Here, the angle is 75 degrees. If a driver stops at the present location of the stop sign on St. Clair, the visibility to the east is very limited. In practice, a driver stops at the stop sign, lets the pedestrians cross, if there are any, then drives to the actual intersection and proceeds to make a right or left turn onto Highway 17. The stop sign can be moved with no great effort if that will help the situation. My point is that sightlines are fine in both directions at this intersection.

The intersection of 14th Street with Highway 17 is different. The sightline to the east is fine but the sightline to the west is not satisfactory and there is no easy solution because of the curve in Highway 17 and the rock cliff. The intersection of the driveway from the home of Mr. Brydges can be improved with paving of a section of the driveway near 14th Street.

The traffic engineer was very briefly cross examined but his opinions were not shaken. His opinions were not contradicted by any other duly qualified and experienced traffic engineering professional witness.

38 Based upon an analysis of pertinent evidence, the Board finds that the traffic that is likely to be generated due to the proposal does not cause an unacceptable adverse impact upon the existing traffic conditions.

39 The third issue in this hearing is the impact of the proposal upon storm water drainage in the neighbourhood.

40 Mr. Pearson, who lives west of the subject property, stated that there was a storm water drainage problem now on his property which would be exacerbated with the proposed development because in his view "water will flow directly onto my property. Right now, sometimes, my garage is under two to three feet of water and with new development it can only get worse." During cross examination, he stated, however, "If the drainage from the development is dealt with, I will be more comfortable with the development but the fact is now he can build five [5] single family homes and he wants to build nine [9] townhouses and even if the drainage problem goes away, I still do not like to see townhouses."

41 Mr. George Aldous, whose property fronts on St. Clair Street and is kitty corner southwest of the subject property, stated, "my concern is with the water run-off from the development. We are downhill from the townhouse site and I am afraid that drainage into our property may increase ten fold. Right now we have ponding in the northeast corner of our property and three years ago when the heavy storm hit us, we had ponding right next to the cottage." Under cross examination, he admitted in a professional forthright manner that "if the subdivision [Development] agreement dealt with the drainage problem, it would certainly give me comfort."

42 Mr. Stephen Campbell, the Chief Executive Officer of Channel Technical Services, an engineering consulting firm, with a number of years of experience gave evidence on the surface runoff of water in the neighbourhood. Using his report [Ex.20], he described the existing conditions and the four alternative ways of dealing with the storm water drainage problem. His main point was that the additional runoff caused by the proposal could be adequately dealt with during detailed engineering design of the storm water management plan that has to be approved by both the Town and the Ministry of the Environment and Energy.

43 Mr. Campbell was briefly cross examined. During cross examination he stated:

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What I have done is a preliminary report. The problem on Pearson and Aldous properties can be dealt with in the management plan. If Fast and Aldous are agreeable, we could use an easement through their properties to solve their ponding problems and at the same time route the water away from this townhouse development.

The opinions of Mr. Campbell were not contradicted by any other duly qualified and experienced witness.

44 Based upon an analysis of pertinent evidence, the Board finds that the increase in runoff caused by the proposal can be adequately dealt with in a storm water management plan and therefore, the proposal does not cause an unacceptable adverse impact upon the existing storm water drainage conditions in the neighbourhood.

45 At the end of the evidence by all the witnesses, the parties agreed to an exploration of conditions that might lead to an agreement. The letters submitted by Messrs. Aldous, Brydges, Griffiths and Pearson made it clear that there was no potential for an agreement.

46 The counsel for the parties submitted documents of authorities and the argument was conducted during a telehearing.

47 During the submissions, it appeared as though a draft Development Agreement between the Town and the Developer might lead to an agreement. Accordingly, the Board requested the counsel for the applicant to draft and agreement and forward it to the counsel for the appellants for comment with the proviso that the counsel for the applicant would have an opportunity to reply to the comments by the counsel for the appellants.

48 The counsel for the applicant, in cooperation with the Town prepared a draft Development Agreement and forwarded it to the counsel for the appellants. The comments by the counsel for the appellants makes it clear that no agreement on the outstanding issues is feasible.

49 The Board has carefully examined the letters from the objectors/appellants, the draft Development Agreement, the comments by the counsel for the appellants and the reply by the counsel for the applicant. The Board has also examined the case law presented by the two parties and indeed has profited from the jurisprudence reflected in them.

50 In the view of the Board, the matters raised by the counsel for the appellants can be adequately addressed in the final Development Agreement.

51 In light of the above reasoning, the appeal is allowed in part and the zoning by-law is amended subject to the following conditions:

1. That each street townhouse dwelling unit shall contain one [1] attached garage and one [1] off street parking station;
2. That a traffic turn-around [cul-de-sac] shall be constructed at the northern end of 13th Street [also known as May Avenue] which is generally along the lines shown in the Plan [Drawing No. MRS-95-03] prepared by Channel Technical Services dated June 19, 1995;
3. That the 14th Street and St. Clair Avenue shall be made one-way southbound and westbound;
4. That the applicant shall improve the driveway apron linking the Brydges property [Lot 2, Plan 59] to the 14th Street in order to facilitate a left turn from the property to the 14th Street;
5. That the applicant shall submit and secure a storm water management plan that is satisfactory to the Town and the Ministry of Environment and Energy. The management plan shall address the following matters among others:

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- [a] The runoff from the proposed development shall not cause an unacceptable adverse impact upon the Pearson property [Lots 25, 26 and 27];
 - [b] The runoff from the proposed development shall not cause an unacceptable adverse impact upon the Latter-Palk property [Lots, 5, 6, 7 and 8]; and
 - [c] The applicant shall secure an easement for an outlet to the Lake of the Woods through the Aldous and Fast properties. The easement shall be in the name of Town of Keewatin and registered on title. If an agreement with Messrs. Aldous and Fast is not feasible, the applicant shall develop the management plan using one or a combination of options presented by Mr. Campbell at the hearing [Ex.20] including any further refinements based upon further study; and
6. The Town shall explore the feasibility of relocating the Pearson garage [on Lots 25 & 26] which encroaches upon the public right of way on 13th Street including the feasibility of constructing a retaining wall along the west side of the proposed new 13th Street shown on Drawing No. MRS-95-03 dated June 19, 1995;

52 The Board's order will not issue until a certified copy of a Development Agreement between the Town and the Developer and a copy of the amended by-law, both documents reflecting the changes directed by the Board is filed with the Board within a period of three [3] months from the date of the issuance of this decision.

53 If there are any questions arising from this decision, the Board may be addressed using available telecommunication technologies.

N.M. KATARY, Member

TAB 3

Oasis Townhomes On Lawrence Inc. v. Toronto (City)

Ontario Local Planning Appeal Tribunal Decisions (f/k/a Ontario Municipal Board)

Ontario Local Planning Appeal Tribunal

Toronto, Ontario

Panel: Gerald S. Swinkin, Member; Dale Chipman, Member

Heard: November 18, 2019.

Oral decision: November 18, 2019.

Filed: December 2, 2019.

LPAT Case No.: PL180241

LPAT File Nos.: PL180241, PL180242

Approval Authority File No.: 17 222637 NNY 15 OZ

Municipality File No.: 17 222637 NNY 15 OZ

2019 LNONLPAT 1410

PROCEEDING COMMENCED UNDER subsection 22(7) of the Planning Act, R.S.O. 1990, c. P.13, as amended
Applicant and Appellant: Oasis Townhomes On Lawrence Inc. Subject: Request to amend the Official Plan --
Failure of the City of Toronto to adopt the requested amendment Existing Designation: Neighbourhoods Proposed
Designated: Site Specific (To be determined) Purpose: To permit 12 five-storey freehold townhouses Property
Address/Description: 579, 581, 583 & 585 Lawrence Ave W Municipality: City of Toronto PROCEEDING
COMMENCED UNDER subsection 34(11) of the Planning Act, R.S.O. 1990, c. P.13, as amended Applicant and
Appellant: Oasis Townhomes On Lawrence Inc. Subject: Application to amend Zoning By-law No. 7625 -- Refusal
or neglect of the City of Toronto to make a decision Existing Zoning: One Family Detached Dwelling Fourth Density
Zone (R4) Proposed Zoning: Multiple-Family Dwellings First Density Zone (RM1(XXX)) Purpose: To permit 12 five-
storey freehold townhouses Property Address/Description: 579, 581, 583 & 585 Lawrence Ave W Municipality: City
of Toronto

(64 paras.)

Appearances

Oasis Townhomes on Lawrence Inc.: Mark Flowers and Zachary Fleisher (student-at-law).

City of Toronto: Kasia Czajkowski, counsel.

MEMORANDUM OF ORAL DECISION DELIVERED

BY GERALD S. SWINKIN AND D.

CHIPMAN ON NOVEMBER 18, 2019

1 This hearing session of the Local Planning Appeal Tribunal (the "Tribunal") proceeded as a settlement hearing with respect to appeals filed by Oasis Townhomes on Lawrence Inc (the "Appellant") concerning applications which it made for official plan amendment and zoning amendment with respect to the assembly of four detached house properties that it owns, municipally known as 579, 581, 583 and 585 Lawrence Avenue West (the "Property").

Oasis Townhomes On Lawrence Inc. v. Toronto (City)

2 There had earlier in the process been engagement in discussions by neighbours to the south of the Property in the development proposal but, based on submissions made by counsel for the Appellant, Mark Flowers, the Tribunal understood that certain modifications were made to the development proposal which may have addressed these concerns. These persons had full notice of the scheduled hearing session but were not personally present nor did they send in any communication as to their intentions. Mr. Flowers did further indicate that he attempted to contact these persons prior to this hearing session but was unable to obtain a response. In their absence, and with the concurrence of the two Parties present, the Tribunal proceeded with the hearing.

3 The Tribunal was further advised by Mr. Flowers, as confirmed by counsel for the City of Toronto (the "City"), that there was a parallel planning process which was underway regarding the Property and other lands on the south side of Lawrence Avenue West which has now culminated in the adoption of Official Plan Amendment 433 ("OPA 433"), which establishes a Site and Area Specific Policy 559 ("SASP 559") for these lands. The policies in OPA 433 have informed the drafting of the site specific zoning settled upon between the Appellant and the City in these appeals.

4 The evidence to support the settlement was called through the consulting planner retained by the Appellant, David Huynh. Mr. Huynh was qualified to proffer opinion evidence on land use planning matters.

5 Mr. Huynh detailed the retainer of his firm in May, 2017 to provide planning and urban design services with respect to the proposed redevelopment of the Property.

Background and Context

6 Mr. Huynh described the current developed state of the Property as consisting of four older, detached one-storey dwellings. He provided graphic, pictorial and oral evidence as to the surrounding lands and general neighbourhood. The Property fronts on Lawrence Avenue West, which is major arterial road in the City transportation network. The lands on the north side of Lawrence Avenue West are designated as Apartment Neighbourhoods in the City Official Plan (the "OP") and are improved with generally four-storey walk up apartment buildings.

7 The lands to the south of the Property lie within the *Neighbourhoods* designation under the OP and consist primarily of detached dwellings, with notable redevelopment in the form of two-storey dwellings replacing one-storey dwellings.

8 Westerly of the Property lies Allen Road, within which right-of-way lies the Spadina line branch of the Line 1 subway operated by the Toronto Transit Commission. The Lawrence Avenue West station on Line 1 accommodates a number of bus transit routes, so that the area is well served by transit.

9 Easterly of the Property lies Bathurst Street, with denser mixed use development and commercial development at the intersection of Lawrence Avenue West and Bathurst Street.

The Redevelopment Proposal

10 The redevelopment proposal for the Property would involve the demolition of the existing structures and their replacement by 12 four-storey townhouse dwellings organized in two blocks of dwelling units (one block consisting of four units and other of eight units) separated by the access drive to the rear of the Property where vehicle parking spaces are provided for each unit.

11 Through discussion between the Appellant's consultants and City staff, various modifications were made to the proposal to ensure achievement of the built form guidelines and controls which have now been incorporated in OPA 433, largely dealing with separation and buffering between the use on the Property and the adjacent *Neighbourhoods* designated lands, and to control the size and extent of the structure around the stairwell at the roof level.

The Summary Planning Opinion

12 Mr. Huynh provided the Tribunal with an overview summary opinion and then a detailed review of the key issues.

13 In his opinion, the applicable planning framework is supportive of residential intensification on the Property.

14 It was his opinion that the settlement proposal is consistent with the 2014 Provincial Policy Statement, conforms to the 2019 Growth Plan for the Greater Golden Horseshoe, conforms to the planning and urban design framework set out in the City of Toronto OP, and has regard to the applicable urban design guidelines. In his testimony with respect to the Provincial planning policy instruments, he took the Tribunal to the relevant sections of each document as summarily referenced below.

15 From a land use planning perspective, it was his opinion that the settlement proposal will contribute to the achievement of numerous policy objectives that promote intensification, growth, and a range of housing choices within built-up areas, particularly in locations that are well served by municipal infrastructure, including public transit.

16 He further asserted that the settlement proposal incorporates an appropriate and desirable form of modest residential intensification that contributes to the provision of a wider range of housing choices within the neighbourhood.

17 It was his view that the proposal provides a logical and appropriate transition to the low-rise residential properties to the south, and from an urban design and built form perspective, the settlement proposal is sensitive to the existing and planned built form context along Lawrence Avenue West and within the neighbourhood to the south.

18 The proposed street-townhouse form responds to the characteristics of this segment of Lawrence Avenue West, which, as a major street, differentiates the *Neighbourhood* designated properties that front onto Lawrence Avenue West from those located in the interior of the *Neighbourhood* to the south.

19 He explained that this form is compatible with the existing low-rise apartment buildings to the north and townhouse blocks to the west, represents a well-designed townhouse form representative of the evolving, planned form of residential development along Lawrence Avenue West, and will have no unacceptable built-form impacts on adjacent properties.

20 He advised that the careful site organization of the settlement proposal ensures that it fits harmoniously within the existing built-form context and reinforces the general physical character of the *Neighbourhood* to the south.

21 This is seen in that the physical form of the townhouse blocks provides a buffer between the major street to the established *Neighbourhood*, while the generous rear yard setbacks, landscape terracing, and conformity with a 45-degree angular plane measured from the rear property line, ensure the mitigation of potential impacts related to light, view and privacy.

22 In this way, in his view, the settlement proposal has regard for, and generally complies with, the Townhouse and Low Rise Apartment Guidelines and conforms to the built-form specifications of the recently adopted OPA 433 (SASP 559).

23 Based on the foregoing, it was his opinion that the settlement proposal represents good planning with respect to both its policy and physical (existing and planned) context and, as such, it was his recommendation to the Tribunal that an approval in principle of the requested rezoning instruments would be in order.

The Planning Evidence by the Key Considerations

24 Mr. Huynh focussed his analysis on what he treated as the critical areas of assessment, which he characterized in the following categories: Intensification, Land Use, Height, Massing, Density, Built Form Impacts and Urban Design. These are summarized by the Tribunal in the following paragraphs under those topic headings.

Intensification

25 It was his opinion that the Property is an appropriate location for modest residential intensification that is supportive of the policy directions articulated in the applicable Provincial and Municipal planning framework especially as it is located along a Major Street (Lawrence Avenue West), providing it with excellent access to existing public transit, including higher order transit.

26 In this respect, OP Policy 4.1(5), as amended by OPA 320, acknowledges that lots fronting onto a major street and designated *Neighbourhoods* are to be distinguished from the lots in the interior of the block adjacent to the street, due to characteristics such as: different lot configurations, better access to public transit, adjacency to developments with varying heights, massing and scale, or direct exposure to greater volumes of traffic on adjacent and nearby streets. Policy 4.1(5) goes on to provide that these factors may be taken into account in the consideration of a more intense form of development on such lots, to the extent permitted by the OP.

27 In addition to being located along a Major Street, the Property is within close proximity to the varying heights, massing and scale of buildings located within the *Apartment Neighbourhood* designated lands to the immediate north, northeast and northwest and the lands designated *Mixed Use Areas* to the west (near Allen Road) and to the east (near Bathurst Street).

28 It is also directly exposed to the traffic volumes along Lawrence Avenue West, which greatly exceed those of the local streets within the established neighbourhood to the south. As a result of these conditions, the Property, along with the abutting properties along Lawrence Avenue West, can be considered to be a geographic neighbourhood distinguished from the neighbourhood to the south, as per OP Policy 4.1(5).

29 Residential intensification on the Property in the form proposed would achieve the objectives of a complete community, by broadening the range of housing choices within the neighbourhood, and providing a logical and appropriate transition in scale to the low-rise residential properties to the south.

30 In his opinion, the optimization of density on the Property is consistent with both good planning practice and overarching Provincial and City policy direction, subject to achieving appropriate built form relationships. Intensification on the Property would support transit ridership and other public amenities, such as parks and schools, and would allow residents to take advantage of the wide array of shops, services, restaurants and other facilities within the area.

Land Use

31 With respect to land use, the proposed four-storey townhouse development, conforms with the land use permissions of the *Neighbourhoods* designation and SASP 559, both of which permit residential uses in lower scale buildings, including townhouses, up to four storeys in height.

32 As earlier referenced, OP Policy 4.1(5), as amended by OPA 320, recognizes that, due to specific characteristics of *Neighbourhoods* designated lands along major streets, such lots may be considered for more intense form of development than that which prevail within the interior of the block adjacent to the major street.

33 In this case, the prevailing building type in the neighbourhood to the south of the Property is one and two-storey single detached dwellings; however, due to the distinguishable characteristics of the lots along Lawrence Avenue West as previously described, a more intense low-rise dwelling form (i.e. townhouses) is appropriate in this location

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and has the potential to act as a buffer between the *Neighbourhood* to the south and the visual and noise impacts resulting from traffic on Lawrence Avenue West.

34 The scale of the proposed townhouse blocks reflects the Property's location along a Major Street and is compatible with the existing one and two-storey dwellings located in the neighbourhood to the south. In this respect, "compatible" does not mean "identical to" but rather means the ability to co-exist without unacceptable impacts of one upon the other.

Height

35 In his opinion, the four-storey height of the townhouse blocks in the settlement proposal is compatible with the surrounding low-rise immediate context, which includes a mix of one and two-storey detached dwellings and low-rise walk-up apartment buildings between 2.5 and 3.5-storeys in height.

36 This proposed height is also in keeping with the maximum height permitted pursuant to the *Neighbourhoods* land use designation. He notes that heights along Lawrence Avenue West between Allen Road and Bathurst Street also include the recently constructed four-storey stacked townhouse units at 639 Lawrence Avenue West, the ten-storey apartment building at 650 Lawrence Avenue West, the six-storey apartment building at 525 Lawrence Avenue West and the seven-storey mixed-use building at 3036-3050 Bathurst.

Massing

37 In terms of massing, it was his opinion that the settlement proposal has been designed and sited to sensitively fit within its context and to respect the existing and planned physical character of the surrounding neighbourhood. The settlement proposal conforms with the massing and built form design criteria set out in SASP 559 including a minimum 9 metre setback from the rear property line, breaks between blocks less than every 36 metres, and conformity with a 45 degree angular plane measured from the rear property line. The four-storey street-wall height along Lawrence Avenue West will create an urban street-edge that is appropriate for a Major Street, while the 3 metre front yard setback provides adequate space for a transition from the public to private realms, which includes landscaping, projecting bay windows, covered porches and stairs.

38 Along the rear of the townhouse blocks, the façade has been stepped in at grade and again at the 3rd level to provide a generous rear yard setback and transition to the lower scale properties to the south.

39 The stair enclosures on the top of each townhouse unit that provide access to the rooftop terrace have also been carefully massed and sited to ensure they too conform with the 45 degree angular plane and to limit their visibility from the adjacent public realm and adjoining properties.

Density

40 From a density perspective, it was his opinion that the proposed density of 1.77 Floor Space Index is appropriate and desirable for the Subject Site.

41 This density reflects a low-rise form of residential intensification that is appropriate for the Property given its location in proximity to the Lawrence West subway station.

42 It was his opinion that it would be appropriate to establish a density for the Property based on specific design, context and urban structure considerations, rather than on the basis of density numbers.

Built Form Impacts

43 In Mr. Huynh's opinion, the settlement proposal will have no unacceptable built form impacts on surrounding properties, including adjacent *Neighbourhoods* designated properties.

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44 To the north, by virtue of the right-of-way width of Lawrence Avenue West (approximately 30 metres) and the deep front yard setbacks of the existing walk-up apartment buildings, the proposed townhouse units will be well separated from the existing buildings, limiting any light, view or privacy impacts.

45 To the east and west, the 1.5-metre exterior side yard setbacks will allow for sunlight penetration and adequate separation that exceeds both the By-law 569-2013 zoning standards for townhouse units (i.e. 0.9 metres for townhouses with units fronting onto a street). Furthermore, to the west, the adjacent dwelling is setback approximately 3 metres, resulting in a cumulative separation distance of 4.5 metres, while to the east, the adjacent dwelling is setback approximately 0.94 metres for a total separation distance of 2.44 metres.

46 In my opinion, these are adequate side yard conditions between compatible low-rise residential housing forms, and will continue to be adequate should the property to the east be developed in accordance with the approved expansion of the adjacent private school and the property to the west be redeveloped in accordance with the directions of SASP 559.

47 To the south the proposed townhouse blocks are setback 11.6 metres between the rear main wall and the rear property line, with a minimum setback distance of 9.0 metres between the projecting balconies and the rear property line.

48 In combination with the settlement proposal's compliance with a 45-degree angular plane measured from the rear property line, and the proposed trees and landscaping strip along that property line, adequate mitigation will be provided for any built form impacts resulting from the townhouse blocks onto these adjacent dwellings.

49 Between the two proposed townhouse blocks, a separation distance of 7.5 metres is appropriate given that the windows along these walls are secondary windows where the main views are oriented to the north and south. As such, it is our opinion that there will be minimal privacy and overlook impacts between the blocks.

Urban Design

50 It was Mr. Huynh's opinion that the settlement proposal is appropriate and desirable in urban design terms and conforms with the applicable built form and urban design policies of the Official Plan (including SASP 559) and is generally in keeping with the Townhouse and Low Rise Apartment Design Guidelines.

51 The settlement proposal will modestly intensify the Property with a low-rise residential form that will improve the pedestrian realm and streetscape along Lawrence Avenue West by reducing the number of curb cuts, consolidating the existing driveways into a single access point and eliminating the existing parking pads in the front and side yards.

52 The proposed townhouse blocks have been appropriately scaled in relation to the existing and planned built form context along Lawrence Avenue West and within the neighbourhood to the south, and will provide an attractive design that will contribute positively to the physical character of the neighbourhood.

53 The street-townhouse form of the settlement proposal responds to the characteristics of this segment of Lawrence Avenue West, which, as a major street, differentiate the *Neighbourhoods* designated properties that front onto Lawrence Avenue West from those located in the interior of the *Neighbourhood* to the south. Furthermore, the careful site organization of the proposal ensures that it fits harmoniously within the existing built-form context and reinforces the general physical character of the *Neighbourhood* to the south.

54 The physical form of the townhouse blocks provides a buffer between the major street to the established *Neighbourhood*, while the generous rear yard setbacks, landscape terracing, and conformity with a 45-degree angular plane measured from the rear property line, ensure the mitigation of potential impacts related to light, view and privacy.

55 The proposal represents a well-designed townhouse project which will contribute to a gradual transition in scale along Lawrence Avenue West, provide high quality design and landscaping, and respect the existing context by providing an appropriate scale that is compatible with the existing and planned residential buildings to the east and west along Lawrence Avenue West and on both side of the street.

The Determination of the Tribunal

56 The Tribunal accepts the uncontroverted evidence of Mr. Huynh and concludes that the revised proposed amendments to the two presently operative zoning by-laws affecting the Property are consistent with the Provincial Policy Statement 2014, will conform with the Growth Plan for the Greater Golden Horseshoe 2019 and will conform with the City OP. As such the Tribunal will allow the appeal with respect to the zoning amendment application, in part, in principle, with the Final Order of the Tribunal to issue once certain conditions agreed to between the Parties have been cleared by the City Solicitor.

57 Those conditions were requested by City Council in its endorsement of the settlement and are acceptable to the Appellant. There were originally five conditions but the Tribunal has deleted the fifth on the basis of the explanation which is provided below.

The four conditions prior to issuance of the Tribunal's Final Order are as follows:

1. The proposed Zoning By-law Amendment is in a final form satisfactory to the Chief Planner and Executive Director, City Planning and the City Solicitor;
2. A Rental Housing Demolition application under Chapter 667 of the Municipal Code pursuant to Section 111 of the *City of Toronto Act* has been submitted by the owner to demolish the 5 existing rental housing units at 579 to 585 Lawrence Avenue West and the Chief Planner and Executive Director, City Planning, under delegated authority, has dealt with such Rental Housing Demolition application;
3. The owner has submitted a revised Functional Servicing Report, including confirmation of water and fire flow, sanitary and storm water capacity, Storm Water Management Report and Hydro-geological Report ("Engineering Reports") to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services, in consultation with the General Manager, Toronto Water; and
4. The owner pays for and constructs any improvements to the municipal infrastructure in connection with the Engineering Reports, to be submitted for review and acceptance by the Chief Engineer and Executive Director, Engineering and Construction Services, should it be determined that improvements to such infrastructure are required to support this development arising from the accepted Engineering Reports.

Withdrawal of the OP Amendment Appeal

58 In his opening submissions, Mr. Flowers indicated that the OP amendment application was filed, not because the Appellant's consulting planners believed that it was required, but due to the fact that City Planning Department staff considered there to be some ambiguity in the approved policy and the form of the redevelopment proposal. Out of an abundance of caution, the OP amendment application was filed, and then due to the failure of the City to deal with it, it was appealed along with the zoning amendment application.

59 Any problems of interpretation which may have appertained at the time of application were resolved through the adoption of OPA 433 and the approval of related policies in OPA 320.

60 The Tribunal heard evidence from Mr. Huynh that the proposed zoning amendments would conform with the OP

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as amended by OPA 433 and that no further amendments to the OP were required. The City did not challenge this evidence.

61 Mr. Flowers indicated a willingness to withdraw the OP amendment appeal. Having heard the evidence of Mr. Huynh, the Tribunal had come to the conclusion that approval of the proposed zoning amendments would not require any further OP amendment and encouraged Mr. Flowers to act on his expressed willingness. He did so by oral submission in front of the Tribunal at the hearing session and the Tribunal acknowledged that withdrawal.

62 The fifth condition requested by City Council as referenced in para. [57] above required withdrawal of the OP amendment appeal. That has been achieved and need not form part of the conditions.

Further Administration

63 Upon transmission of the written clearance referenced in para. [57] above, the Final Order of the Tribunal will issue with respect to the forms of zoning by-law amendment which are also transmitted at that time to confirm the finally settled forms of zoning amendment by-laws.

64 In the event that there are any issues relating to the clearance of the above referenced conditions or otherwise arising out of this Decision, the panel may be spoken to through the Case Coordinator at the Tribunal, who will advise the Members, and direction will be given to the Parties as to how their submissions will be addressed.

GERALD S. SWINKIN
MEMBER

DALE CHIPMAN
MEMBER

TAB 4

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 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
OLT Lead Case No.: OLT-22-002377
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 and 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-23-002378
Legacy Case No: PL210105
OLT Lead Case No.: OLT-22-002377
Legacy Lead Case No: PL210104

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

Applicant and Appellant: 30 Duke Street Limited
Subject: Appeal of the Decision to 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

AFFIDAVIT OF JESSICA DE MARINIS, JD

I, JESSICA DE MARINIS, of the City of Hamilton, in the Province of Ontario, AFFIRM AND SAY AS FOLLOWS:

1. I am an associate lawyer with TMA Law. I have been working in this position since February 2023.
2. I prepared for and was in attendance as counsel of record at the Ontario Land Tribunal (“**OLT**”) hearing of 30 Duke Street Limited’s (“**30 Duke**”) appeal, bearing Ontario Land Tribunal Lead Case No. OLT-22-002377. As such, I have knowledge of the matters hereinafter deposed to.

Case Management Conference

3. On October 30, 2024, I have been advised by Ms. Jennifer Meader, counsel for 30 Duke, that the parties attended a Case Management Conference. At the Case Management Conference, the Tribunal decided that any issues concerning City of Kitchener’s (“**City**”) new Official Plan No. 49 (“**OPA 49**”) and new Zoning By-law (“**New ZBL**”) were to be struck from the issues list (“**CMC Decision**”). A copy of the CMC Decision is attached at Exhibit “**A**”.

FOBT’s Opening Statement

4. The hearing of this matter commenced on April 22, 2025. In Friends of Olde Berlin Town’s (“**FOBT**”) opening statement, it made remarks about the application of the clergy principle to 30 Duke’s appeal, such that the appeal should be evaluated against the current in-force policy regime for the surrounding properties.
5. Ms. Meader objected to these statements on the basis that the Tribunal had already ruled on the relevant and determinative policy regime in the CMC Decision. FOBT agreed to move on from this point.

Day 2 of the Hearing

6. On April 23, 2025, day 2 of the hearing, FOBT cross-examined 30 Duke’s witness, Ms. Andrea Sinclair.
7. FOBT asked Ms. Sinclair if she would agree that the current zoning on the lands south of Weber Street, opposite to the subject lands, were limited to height dependent on lot sizes.
8. Ms. Meader objected on the basis that FOBT’s question was not relevant, based on the CMC Decision of the Tribunal. She argued that by attempting to introduce the current zoning through cross-examination, FOBT was indirectly introducing evidence about the current policy regime, contrary to the CMC Decision.

9. FOBT argued that it agreed that the proposal does not have to comply with OPA 49 and the New ZBL, however it argued that proposal had to be compatible with the existing built form.
10. After hearing the submissions of both FOBT and Ms. Meader, the Tribunal noted that the parties made submissions about OPA 49 and the New ZBL at the October CMC and that it made a ruling at that time. The Tribunal ruled that it would not permit further analysis on OPA 49 and the New ZBL beyond Ms. Sinclair acknowledging that there was new policy in place.

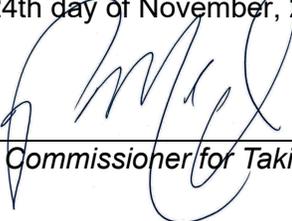
Day 4 of Hearing

11. On April 25, 2025, day 4 of the hearing, FOBT's witness Mr. Michael Barton was in examination in chief. Mr. Barton testified about the City's growth strategy and the background studies on tracking intensification and land supply. He testified that the downtown line along Weber Street marked the City intention to differentiate between the north and south side of Weber Street in terms of size of lot and nature of built form and level of growth.
12. Ms. Meader objected on the basis that the line of questioning and the evidence about the City's studies was an attempt to introduce the new policy regime, contrary to the Tribunal's CMC Decision. She argued that FOBT attempted to make the new policy regime relevant by putting it on the Issues List during the October CMC, but the Tribunal ruled that it was not relevant or determinative.
13. FOBT argued that it did not recall that OPA 49 and the New ZBL was not to be part of the discussion.
14. The City argued that the new policy instruments were not determinative but were relevant for context.
15. After hearing the parties' submissions, the Tribunal and upheld Ms. Meader's objection. It ruled that any evidence on the new policy regime was prejudicial because it was not on the issues list. The Tribunal ruled that there could be no evidence introduced about the new policy regime.
16. Further, in response to a later objection of Ms. Meader, the Tribunal ruled that Mr. Barton was limited to providing oral evidence on the policy regime that was in force at the time the application was submitted. The Tribunal explained that an expert's evidence is required to be put in writing and that the experts are expected to follow their witness statement in their oral testimony.

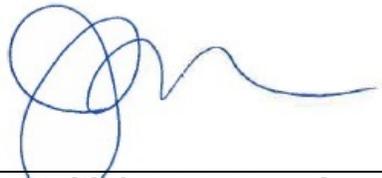
Day 6 of the Hearing

17. On April 29, 2025, day 6 of the hearing, in the context of cross-examination of the City's witness, Mr. Eric Schnider, the Tribunal ruled that FOBT was not permitted to ask the City's witnesses leading questions, but instead questions of clarification only, because FOBT and the City were aligned in interest. The Tribunal ruled that FOBT was not permitted to ask questions of the City's witnesses that would introduce a new topic.
18. I swear this Affidavit in support of the Applicant's Response to FOBT's Request for Review and no other or improper purpose.

SWORN BEFORE ME
At the City of Hamilton,
In the Province of Ontario,
This 24th day of November, 2025



A Commissioner for Taking Affidavits

} 

JESSICA DE MARINIS

This is **Exhibit "A"** of the
Affidavit of Jessica De
Marinis affirmed on
November 24 2025.

A handwritten signature in black ink, appearing to be 'J. DeMarinis', is written over a horizontal line.

A Commissioner, etc.

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: November 21, 2024

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 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
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OLT Case Name:	30 Duke Street Limited v. Kitchener (City)

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Applicant/Appellant:	30 Duke Street Limited
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Reference Number:	20/013/W/JVW
Property Address:	22 Weber Street W (22 Weber Street W.)
Municipality/UT:	Kitchener/Waterloo
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Legacy Case No:	PL210105
OLT Lead Case No:	OLT-22-002377
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PROCEEDING COMMENCED UNDER subsection 42(6) of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18

Applicant/Appellant Subject:	30 Duke Street Limited 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

Heard: October 30, 2024, by Video Hearing

APPEARANCES:

Parties

Counsel/Representative*

30 Duke Street Limited

Jennifer Meader
Anna Toumanians

City of Kitchener

Katherine Hughes

Regional Municipality of Waterloo

Andy Gazzola
Fiona McCrea (*In Absentia*)

Friends of Olde Berlin Town

Hal Jaeger*

MEMORANDUM OF ORAL DECISION DELIVERED BY YASNA FAGHANI AND GREGORY J. INGRAM ON OCTOBER 30, 2024 AND ORDER OF THE TRIBUNAL

INTRODUCTION AND BACKGROUND

[1] This was a further Case Management Conference (“CMC”) concerning an appeal by 30 Duke Street Limited (“Appellant”) of the City of Kitchener’s (“City”) failure to make a decision with respect to the Appellant’s applications for an Official Plan (“OP”) and Zoning

By-law Amendment (“ZBA”) regarding the property located at 22 Weber Street West in the City (“Subject Property”).

[2] The proposed amendments facilitate the construction of a new 19-storey multiple residential building, having 162 total units, and 24 parking spaces.

[3] At the CMC on August 27, 2024, a 15-day Hearing was scheduled to commence on April 15, 2025. The Tribunal ordered a further CMC to determine whether changes to the provincial legislation which would have any bearing on the draft Procedural Order (“PO”), to determine if any participants wished to update their statements, and to provide the opportunity for any additional Participant Status requests to be submitted.

PROCEEDINGS UPDATE

[4] The Tribunal confirmed that it did not receive any new Participant Status requests and no Participants updated their statements since the last CMC. As such, the Tribunal ruled that no further Participant Status requests would be considered moving forward.

[5] The Counsel for the Appellant advised that the parties have communicated with each other to update and reflect on the current policies and changes to the Legislation. A draft PO was filed on consent of the parties except for a few issues that were highlighted. The Counsel advised that said highlighted issues dealt with the City’s new Official Plan No. 49 (“OPA 49”) and new Zoning By-law No. 2024-065 (“new ZBL”). These issues were added to the Issued List (“IL”) by Friends of Olde Berlin Town. The Appellant did not agree to said highlighted issues and the Counsel wished to make submissions regarding the Appellant’s concerns. Both Counsels for the City and the Regional Municipality of Waterloo (“Region”) agreed in principle with the draft PO and did not take a position regarding the highlighted issues. Both the City and the Region agreed that the highlighted issues of concern were disputes between the Appellant and Friends of Olde Berlin Town.

[6] The Counsel for the Appellant submitted that the Subject Property is explicitly exempt from OPA 49. In support for her position, she relied on an Excerpt of OPA 49

dated March 18, 2024, marked as **Exhibit 1**. She identified the Subject Property as being outside of the areas where amendments to the OP applied. She advised that the City decided to exempt the Subject Property from the amendments because it was under appeal before this Tribunal. Additionally, she relied on an Excerpt of the new ZBL dated March 11, 2024, marked as **Exhibit 2**, in support of her position that the Subject Property was exempt from the ZBL Amendments. She again identified the areas where the ZBL Amendments applied and then she identified the Subject Property was not included in said areas.

[7] Counsel for the Appellant submitted that this is not a case where the *Clergy* Principle is in question as that Policy and Regulation simply do not apply to the Subject Property. The Counsel for the Appellant further submitted that the purpose of a CMC is to ensure that a merit hearing can proceed as efficiently as possible. She submitted that including inapplicable policies, such as OPA 49 and the new ZBL, runs counter to that purpose.

[8] Mr. Jaeger, the representative of Friends of Olde Berlin Town, advised the City has updated the OP and all the lands surrounding the Subject Property and new zoning has been approved around the Subject Property. He submitted that the merits of the argument when they were first launched no longer apply because of all the changes surrounding the Subject Property and that this appeal separates the Subject Property from the municipal jurisdiction. He requested that the Tribunal reconsider its decision to re-open the appeal. In the alternative, he requested that the Tribunal place predominant weight on the new provincial and municipal guidelines to test the proposal. He recognized the fact that the City exempted the Subject Property from OPA 49 and new ZBL and did so because the Subject Property was under appeal to the Tribunal. He submitted that the Tribunal should “release the matter from [its] jurisdiction and return [it] to the jurisdiction of the City”. He finally submitted that if the matter were to proceed to a hearing, testing the proposal against the new OPA 49 and ZBL would ensure appropriate transition and fairness.

[9] Additionally, Mr. Jaeger advised that the new ZBL was under appeal under a different file and was waiting for a decision from the Tribunal. He requested an adjournment of this Hearing until the decision of that appeal of the ZBA was rendered.

[10] Counsel for the City confirmed that the Subject Property is exempt from OPA 49 and the new ZBL. The new ZBL is currently under appeal regarding two other properties and not related to the Subject Property. The Region confirmed that the OPA 49 is in full force and effect and does exclude the Subject Property.

[11] In response to Mr. Jaeger, the Counsel for the Appellant advised that while the new provincial legislation has been implemented, it is not significantly different from the old version and the main purpose was to consolidate the old provincial legislation with the Growth Plan for the Greater Golden Horseshoe. While she agrees that the regional plan has been revised, the issues related to the amendments will be framed in terms of the *Clergy Principle* and arguments in that regard will follow at the merit Hearing.

[12] After hearing submissions from all Parties and standing down to confer, the Tribunal determined that the OPA 49 is in full force and effect and not under appeal. It specifically exempts the Subject Property from any amendments and as such has no relevance to this matter. Further, the Subject Property is also exempt from amendments to the new ZBL. While there is an appeal before this Tribunal concerning an appeal of the new ZBL, it is unrelated to the Subject Property. As such, the highlighted issues on the draft IL concerning OPA 49 and ZBA are to be stuck out.

[13] The Tribunal received a finalized IL and PO on Thursday, October 31, 2024, reviewed it, approved same and deemed it in force and effect to guide the proceedings of the merit hearing.

MEDIATION/SETTLEMENT

[14] The Counsel for the Appellant advised that settlement discussions have occurred with the City and the Region with the view of narrowing the issues. All counsel agreed that

it was appropriate to proceed this way. The Parties were aware of Tribunal-led mediation and indicated that they are not opposed to mediation, but that it is premature to determine whether that will be required. The preferred route is to continue settlement discussions at this time.

[15] Of note, Mr. Jaeger advised that mediation may assist in this matter, although he agreed it was premature at this time and was not opposed to the matter. He advised that Friends of Olde Berlin Town have asked to be part of settlement discussions but have yet been included in same.

ORDER

[16] THE TRIBUNAL ORDERS THAT:

1. The Procedural Order is in full force and effect as it appears in **Schedule 1** below and this matter will proceed to the 15-day Hearing scheduled to commence on April 15, 2024.

“Yasna Faghani”

YASNA FAGHANI
MEMBER

“Gregory J. Ingram”

GREGORY J. INGRAM
MEMBER

Ontario Land Tribunal

Website: 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.

Schedule 1



Ontario Land Tribunal

655 Bay Street, Suite 1500, Toronto, ON M5G 1E5

Tel: 416-212-6349 | 1-866-448-2248

Web Site: olt.gov.on.ca

CASE NO(S). : OLT-22-002377
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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

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.

ATTACHMENT 1
PARTIES & PARTICIPANTS

Parties

1. 30 Duke Street Limited

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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	City FOBT Region

	<p>built form, setbacks for surface parking facilities from the public realm, as well as setbacks and step backs from other properties?</p> <p>Do the requested site specific zoning regulations address adequate setbacks and driveway visibility triangles?</p> <p>Does the driveway width comply with zoning regulations and Regional Requirements for Access By-law and policy?</p>	
	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) 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), 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