

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: September 13, 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
Legacy Lead Case No:	PL210104
OLT Case Name:	30 Duke Street Limited v. Kitchener (City)

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant/Appellant:	30 Duke Street Limited
Subject:	Application to amend the Zoning By-law – Refusal or neglect to make a decision
Reference Number:	20/013/W/JVW
Property Address:	22 Weber Street W (22 Weber Street W.)
Municipality/UT:	Kitchener/Waterloo
OLT Case No:	OLT-22-002378
Legacy Case No:	PL210105
OLT Lead Case No:	OLT-22-002377
Legacy Lead Case No:	PL210104

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

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

Heard: August 27, 2024, by Video Hearing

APPEARANCES:

Parties

Counsel

30 Duke Street Limited

Jennifer Meader

City of Kitchener

Katherine Hughes

Region of Waterloo

Fiona McCrea

Friends of Old Berlin Town

Hal Jaeger

MEMORANDUM OF ORAL DECISION DELIVERED BY YASNA FAGHANI AND GREGORY J. INGRAM ON AUGUST 27, 2024 AND ORDER OF THE TRIBUNAL

INTRODUCTION AND BACKGROUND

[1] This was a Case Management Conference (“CMC”) to re-open a file placed in “closed status” by the Tribunal since August 2023. The matter concerns 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 Official Plan (“OP”) and Zoning By-Law (“ZBA”) amendments regarding the property located at 22 Weber Street West (“Subject Property”).

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

[3] On December 2, 2022, the Tribunal Ordered that this appeal, case number OLT-22-002377, and the accompanying *Heritage Act* permit appeal, case number OLT-22-4383, be consolidated and a 20-day Hearing was scheduled to proceed on March 13, 2023.

[4] In January 2023, the Appellant, on consent of the City and Region of Waterloo ("Region"), requested an adjournment of the Hearing *sine die* due to changes in the governing legislation and policy that may impact the Subject Property and the development proposal. The Tribunal granted the adjournment. Sometime thereafter, this matter was placed on "closed status" by the Tribunal.

AFFIDAVIT OF SERVICE AND STATUS REQUESTS

[5] There were no issues or concerns with the Affidavit of Service sworn on August 12, 2024.

[6] The Tribunal received two requests for Participant status from Mica Sadler and Ron Brohman. Both individuals were in support of the Proposed Development and reside in the vicinity of the Subject Property. The Parties all consented to the status requests. The Tribunal granted Participant status to both individuals.

PROCEEDINGS UPDATE

[7] Counsel for the Appellant advised that the City undertook a conformity exercise given the changes to the legislation. In that process, it decided to exempt the Subject Property from the conformity exercise because it was under appeal. As such, Counsel for the Appellant submitted that it is no longer necessary to wait until new legislation comes into force. Her client wished to proceed with an appeal based on the planning documents in force at the time of the original application. She advised that she had

made updates to the issues list (“IL”) reflecting the impact of the changes to the legislation and submitted a draft procedural order (“PO”). She requested a 15-day Hearing be scheduled sometime between April and August 2025.

[8] Both counsel for the City and Region confirmed Counsel of the Appellant’s submissions and supported proceeding with a 15-day Hearing.

[9] Mr. Jaeger, the representative for the Friends of Old Berlin Town, submitted that he wished to wait until the new Zoning By-law and OP came into force before setting Hearing dates. He submitted that this would allow sufficient time to make changes to the IL in reference to the new policies and guidelines and provide an opportunity for additional Participants to request status since many neighbours have moved out of the area and new individuals have since moved in and may have concerns that should be heard.

[10] In response, Counsel for the Appellant submitted that it is not necessary to further delay the process and wait until the new ZBA and OP comes into effect since it has been decided that the Subject Property is exempt from any changes related to these planning instruments. Counsel welcomed the idea of working with the Parties on adding any issues which reflect the current law or changing any issues because of applicable policies at the provincial level. She proposed a further CMC be scheduled to finalize the IL and PO after October 20, 2024, once the new planning documents are in force. Additionally, neither counsel for the Appellant, City or Region had issues with additional Participants being considered.

[11] After hearing submissions from all Parties, the Tribunal scheduled a CMC and a 15-day Hearing, with details outlined further below in this Decision. The Tribunal also confirmed that it will consider any additional Participant status requests and permit current Participants to update their statements for consideration at the next CMC. No additional Party status requests will be considered.

MEDIATION/SETTLEMENT

[12] Counsel for the Appellant advised that informal settlement discussions with Counsel for the City have been ongoing. The Parties were made 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 outside of the formal Tribunal process.

HEARING PLANNING

[13] As discussed above, the Tribunal heard submissions from the Parties regarding the next steps concerning this case. In summary, the Parties anticipate calling between four to eight witnesses and requested 15 days for a Hearing. They also requested that a further CMC be set in October 2024.

[14] A further CMC will commence on **Wednesday, October 30, 2024**, beginning at **10 a.m.** by video, as per the connection details outlined below in paragraph [15]. The purpose of the second CMC is to receive an update from the Parties, consider any additional Participants, review the PO, finalize the IL and confirm the number of days scheduled for the Hearing.

[15] The Tribunal scheduled a 15-day Hearing to commence on **Monday, April 14, 2025**, at **10 a.m.** by video, excluding **Friday, April 18, 2025**, and **Monday, April 21, 2024**, as the Tribunal will not be sitting on these dates. The further CMC and the 15-day Hearing are scheduled to proceed as follows:

October 30, 2024 at 10 a.m. (one-day CMC)

GoTo Meeting: <https://global.gotomeeting.com/join/709076365>

Access code: 709-076-365

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

Audio-only access code: 709-076-365

April 14, 2025 at 10 a.m. (15-day Hearing)**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

[16] Parties and Participants are asked to log into the Video Hearings at least **15 minutes** before the start of the event to test their video and audio connections.

[17] For all Video Hearings, the Parties and Participants are asked to access and set up the application well before the event to avoid unnecessary delay. The desktop application can be downloaded at [GoToMeeting](https://app.gotomeeting.com/home.html) or a web application is available: <https://app.gotomeeting.com/home.html>.

[18] Persons who experience technical difficulties accessing the GoToMeeting application, or who only wish to listen to the event, can connect to the event by calling into an audio-only telephone line.

[19] Individuals are directed to connect to the event on the assigned date at the correct time. It is the responsibility of the persons participating in the Video Hearings to ensure that they are properly connected to the event at the correct time. Questions prior to the hearing event may be directed to the Tribunal's Case Coordinator having carriage of this case.

[20] The Members are not seized, and no further notice is required.

ORDER**[21] THE TRIBUNAL ORDERS THAT:**

1. A further Case Management Conference and 15-day Hearing will commence as per the details outlined in paragraphs [14] through [19] above.

“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

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