

**Ontario Land Tribunal**  
Tribunal ontarien de l'aménagement  
du territoire



**ISSUE DATE:** December 10, 2021

**CASE NO(S):** PL210104

**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 West  
Municipality: City of Kitchener  
Municipality File No.: 20/013/W/JVW  
OLT Case No.: PL210104  
OLT File No.: PL210105

**Heard:** December 3, 2021 by Video Hearing ("VH")

**APPEARANCES:**

<b><u>Parties</u></b>	<b><u>Counsel/Representative*</u></b>
30 Duke Street Limited (“Applicant”)	J. Meader
City of Kitchener (“City”)	L. MacDonald
Regional Municipality of Waterloo (“Region”)	F. McCrae
Friends of Olde Berlin (“Friends”)	H. Jaeger*

**MEMORANDUM OF ORAL DECISION DELIVERED BY BLAIR S. TAYLOR ON  
DECEMBER 3, 2021 AND ORDER OF THE TRIBUNAL**

---

**INTRODUCTION**

[1] The Tribunal held its third Case Management Conference (“CMC”) on this matter for which another panel of the Tribunal had set down a four-week hearing to commence on August 29, 2022.

[2] The matter before the Tribunal concerned appeals of applications for an Official Plan Amendment (“OPA”) and a Zoning By-law Amendment (“ZBA”) for the lands known municipally as 22 Weber Street W.

[3] In the lead up to this CMC, the Tribunal had been provided with Articles of Incorporation, another request for participant status, and another draft of a Procedural Order and Issues List (“PO”).

[4] For the reasons set out below, the Tribunal assigned party status to the Friends of Olde Berlin (“Friends”), granted participant status to Kathryn Forler, directed a resubmission of the Applicant’s revised plans, and set a fourth CMC for April 4, 2022.

## DECISION

[5] At the CMC of June 28, 2021, the Tribunal had awarded party status to Hal Jaeger and Aaron Scriver, but had denied party status to the Friends as it was not yet incorporated.

[6] In the lead up to the hearing, Articles of Incorporation were filed with the Tribunal and marked as Exhibit 1 to the CMC for the Friends. At the request of Mr. Jaeger and Mr. Scriver, and on consent of all the parties, the Tribunal assigned that party interest to the Friends, released Mr. Jaeger and Mr. Scriver, and directed that Mr. Jaeger forthwith provide the Articles of Incorporation to counsel for the Applicant.

[7] Exhibit 2 is the request for participant status for Kathryn Forler. On consent of all the parties, the Tribunal awarded participant status to Ms. Forler.

[8] Exhibit 3 is the most recent draft of the PO.

[9] Of note from Exhibit 3 is Issue 39 entitled "Change to Applications":

The proposed applications submitted to the City of Kitchener were for a 15 storey proposed development. In their appeal, the Appellant requested an increase to 19 storeys for which the City of Kitchener has not received any revised submissions. The proposed applications received and reviewed by the City of Kitchener and the Region of Waterloo, and before the OLT, are for a 15 storey building. The City and Region have not undertaken any evaluation of the potential impacts of a 19 storey proposed development. (Emphasis added).

[10] As the Tribunal had Exhibit 3 before it, the Tribunal inquired of counsel for the Applicant if the Applicant was intending to pursue a 19-storey development?

[11] Counsel for the Applicant responded that it was her client's intent to do so and that the draft PO made provision for a revised proposal on or before February 28, 2022.

[12] The Tribunal noted that it was the intent of a Procedural Order and Issues List to provide for a fair and transparent hearing process, and that four additional storeys of

height could potentially *inter alia*: increase the number of units, the overall density, the number of required parking spaces, the number of vehicles, and, depending on the building design, the sun/shadow analysis.

[13] To that end, the Tribunal inquired what process the Applicant intended on following: a formal resubmission of its applications or simply attempting to proceed within the context of the hearing to date, and when all this might occur? The response was that counsel believed it could simply occur as part of the procedure to date and that the materials could be supplied by the end of the year.

[14] Counsel for the City submitted that the Tribunal had no jurisdiction to consider a revised proposal for 19 storeys and that if there were a revised proposal it would require new supporting reports and come in a formal resubmission with all supporting materials.

[15] Counsel for the Region, and Mr. Jaeger agreed that the Issues List could not be finalized as the parties needed to know exactly what was being proposed.

[16] The Tribunal raised with all the parties the subject of alternative dispute resolution and/or Tribunal-led mediation. All the parties were conceptually agreeable but inasmuch as the responding parties had no actual revised plans, they were not in a position to seek formal instructions.

[17] The Tribunal, having heard from all the parties, refused to consider finalizing the draft PO as there was a revised proposal coming forth, which none of the other parties have seen. The Tribunal advised counsel for the Applicant that the parties needed to have the revised proposal in hand in order to fully appreciate what was being proposed before an Issues List could be finalized. To do otherwise would be extremely prejudicial to the City and other opposing parties.

[18] Thus, the Tribunal directed the following;

- a. The draft PO (Exhibit 3) will be held in abeyance;

- b. The Applicant shall make a fulsome formal resubmission to the City on or before **December 31, 2021** and copy all the parties;
- c. The City will utilize its normal protocol and process for the resubmission;
- d. The Tribunal set a **fourth CMC for April 4, 2022 commencing at 10 a.m. by VH**, at which time the Tribunal may:
  - i. Hear any motion (following the Tribunal's Rules of Practice and Procedure) with respect to its jurisdiction to consider a 19 storey development proposal notwithstanding that the applications to the City were for 15 storeys;
  - ii. Consider any new requests for party status and participant status as a result of the resubmission;
  - iii. Hear submissions with regard to the draft PO found at Exhibit 3;
  - iv. Hear any submissions with regard to any off-line discussions on the use of alternative dispute resolution or Tribunal-led mediation; and
  - v. Consider appropriate future hearing steps.

[19] The **fourth CMC on Monday April 4, 2022, shall commence at 10 a.m. by VH.**

[20] Parties are asked to log into the video hearing at least **15 minutes** before the start of the event to test their video and audio connections:

<https://global.gotomeeting.com/join/613665325>

**Access code:** 613-665-325

[21] Parties and participants are asked to access and set up the application well in

advance of 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>

[22] 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: [+1 \(647\) 497-9373](tel:+16474979373). The access code is 613-665-325.

[23] 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 hearing by video 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.

[24] There will be no further notice.

[25] I am not seized.

[26] Scheduling permitting, I may be available for case management purposes.

[27] This is the Order of the Tribunal.

*"Blair S. Taylor"*

BLAIR S. TAYLOR  
MEMBER

**Ontario Land Tribunal**

Website: [olt.gov.on.ca](http://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.