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Via Same Day Courier

December 20, 2016

City of Guelph

Attention: Stephen O'Brien, City Clerk

1 Carden Street

Guelph, ON N1H 3A1

Dear Mr. O'Brien:

Re: By-Law (2016) – 20113

75 Dublin Street North

City File No. ZC1612A

Rykur Holdings Inc.

Appeal to Ontario Municipal Board Pursuant to s. 34(19) of the *Planning Act*

Our File No. 13573

We are counsel to Rykur Holdings Inc. ("Rykur") in this matter. Rykur is the owner of the subject lands: 75 Dublin Street North in Guelph. Rykur made extensive submissions to the City in respect of the proposed by-law.

On November 30, 2016, the City of Guelph passed Zoning By-law (2016) – 20113 with respect to the subject site. Pursuant to Section 34(19), we hereby appeal the by-law to the Ontario Municipal Board.

In general terms, the by-law as approved does not permit an appropriate scale of development for the subject site. In particular, it does not facilitate the provision of affordable housing and housing for older persons. The proposal advanced for Rykur for the site included an additional 5th storey over a portion of the building floor plate. This additional storey is essential to providing affordable housing and housing for those with special needs.

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TURKSTRA MAZZA ASSOCIATES, LAWYERS

In particular, the reasons for the appeal include but are not limited to the following:

1. The planning authority's decision to approve this zoning by-law was not consistent with section 1.1.1 b) of the Provincial Policy Statement 2014 to accommodate an appropriate range and mix of residential (including affordable housing and housing for older persons);
2. The planning authority's decision to approve this zoning by-law was not consistent with section 1.4.3 of the Provincial Policy Statement 2014 requiring that planning authorities shall provide for an appropriate range and mix of housing types and densities by implementing minimum targets for the provision of housing which is affordable to low and moderate income households and by permitting and facilitating all forms of housing required to meet the social, health and well-being requirements of current and future residents, including special needs requirements;
3. The municipality's decision to approve this zoning by-law was not in conformity with section 3.2.6 5 of the Growth Plan for the Greater Golden Horseshoe, 2006 (Office Consolidation, June 2013) to implement minimum affordable housing targets;
4. Council's decision to approve this zoning by-law was not in conformity with section 2.4.6.1 Urban Growth Centre (Downtown Guelph) policies of the Guelph Official Plan (2014 Consolidation) that Downtown Guelph be planned and designed to provide for additional residential development, including affordable housing;
5. Council's decision to approve this zoning by-law was not in conformity with section 2.4.11 Affordable Housing policies of the Guelph Official Plan (2014 Consolidation) that the City will make provisions for an adequate range of housing type and affordability options by implementing minimum housing targets for the provision of housing that is affordable to low and moderate income households, in consultation with the County of Wellington; as well as permitting and facilitating all forms of housing required to meet social, health and well-being requirements, including special needs requirements;
6. Council's decision to approve this zoning by-law was not in conformity with section 7.2.2 Housing policies of the Guelph Official Plan (2014 Consolidation) that the City shall encourage and assist, where possible, in the production of an adequate supply and mix of affordable housing by expediting the development approval process and other administrative requirements and partnering with the private sector and other government levels to implement housing programs;

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7. Council's decision to approve this zoning by-law was not in conformity with section 11.1.7 polices of the Downtown Secondary Plan to promote the development of diverse neighbourhoods in Downtown with a variety of housing choices, including units suitable for affordable housing;
8. Council's decision to approve this zoning by-law was not in conformity with section 11.1.8.4 the Height and Density Bonusing policies of the Downtown Secondary Plan to provide priority community benefits considered appropriate for the application of increased height and density in Downtown which may include, but are not limited to the provision of housing that is affordable to low and moderate income households, special needs housing or social housing. Section 11.1.8.4.4, A by-law passed under Section 34 of the Planning Act is required to permit increases in height and/or density. The by-law shall set out the approved height and/or density and shall describe the community benefits which are being exchanged for the increases in height and/or density. The landowner may be required to enter into an agreement with the City that addresses the provision of community benefits. The agreement may be registered against the land to which it applies;
9. Council's decision to approve this zoning by-law was not in conformity with section 9.10.7 the Holding 'H' Zone polices of the Guelph Official Plan (2014 Consolidation) that the City may utilize the holding symbol 'H' where the use of land is definitely established but a specific development proposal is considered premature for immediate implementation. The City may apply a holding (H) symbol in conjunction with the implementing Zoning By-law for any land use designation of this Plan in one or more of the following circumstances where it is necessary to secure commitments consistent with the policies of this Plan or where development is contingent upon other related matters occurring first, such as securing funding agreements. Section 9.10.8, The City may remove the holding (H) symbol in the implementing Zoning By-law where Council is satisfied that all conditions of the City have been satisfied to ensure appropriate development. The satisfactory completion of conditions may include, but not be limited to, appropriate financial requirements and the signing of necessary agreements;
10. Council's decision to approve this zoning by-law does not provide a building gross floor area of 3,500 m² as noted on page 6 of Guelph Report Number 16-85 since an additional setback is required from Cork Street to accommodate the driveway to the proposed underground parking and to accommodate the required hydro transformer;
11. Council's decision to approve this zoning by-law does not permit a 5 storey building or a maximum geodetic elevation of 365 m (above sea level) including the mechanical, stairway and elevator penthouse required for the provision of affordable housing;

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12. Council's decision to approve this zoning by-law is not based on planning opinion that there would be unacceptable adverse shadow impacts from the 5 storey proposal, as noted on pages 8, 10, 45, 46, 47 of Guelph Report Number 16-85;
13. Council's decision to approve this zoning by-law did not consider Section 37 (1) of the Planning Act that the council of a local municipality may, in a by-law passed under section 34, authorize increases in the height and density of development otherwise permitted by the by-law that will be permitted in return for the provision of such facilities, services or matters as are set out in the by-law if "*there is an official plan in effect in the local municipality that contains provisions relating to the authorization of increases in height and density of development*";
14. Council's decision to approve this zoning by-law did not consider the shadow impact of a 4 storey (16 m high) building pursuant to the existing I.1 Institutional Zone;
15. Council's decision to approve this zoning by-law with a 4.5m Side Yard instead of the 3m Side Yard proposed by City staff in the Draft Downtown Zoning By-law did not consider that 3m is the landscape buffer width required by the City's Zoning By-law to allow a compatible transition between land uses; and
16. Council's decision to approve this zoning by-law with increased building setbacks at the rear yard is not based on planning analysis or planning opinion that the proposed building setbacks at the rear yard would have an unacceptable negative impact.

We are attaching a completed Appellant Form (A1) as well as a cheque made payable to the Minister of Finance for the applicable fee.

We are also filing an appeal of the decision of the City of Guelph to refuse a proposed official plan amendment for the same property. In our view, these appeals should be consolidated.

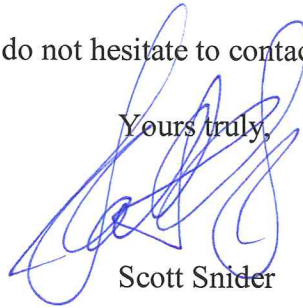
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Attn: Mr. S. O'Brien
December 20, 2016

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If there is anything else you require, please do not hesitate to contact us.

Yours truly,



Scott Snider

cc. Tom Lammer, client
A. Clos, Astrid J. Clos Planning Consultants

SSnd 13573/1
Encls.

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TURKSTRA MAZZA ASSOCIATES, LAWYERS

**Environment and Land Tribunals
Ontario**

Ontario Municipal Board

655 Bay Street, Suite 1500

Toronto ON M5G 1E5

Telephone: (416) 212-6349

Toll Free: 1-866-448-2248

Fax: (416) 326-5370

Website: www.elto.gov.on.ca

**Tribunaux de l'environnement et de
l'aménagement du territoire Ontario**

**Commission des affaires municipales
de l'Ontario**

655 rue Bay, suite 1500

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Sans Frais: 1-866-448-2248

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Instructions for preparing and submitting the Appellant Form (A1)

NOTICE – APPEAL FEE CHANGE

Effective July 1, 2016, Ontario Municipal Board (OMB) appeal fees are changing from \$125 to \$300. Appeals received and date-stamped by the municipality/approval authority on or after July 1, 2016, are subject to the new appeal fee.

- The fee of \$25 for each additional consent appeal filed by the same appellant against connected consent applications does not change.
- The fee of \$25 for each additional variance appeal filed by the same appellant against connected variance applications does not change.

OMB appeal fees are still \$125 for appeals with date-stamps from before July 1, 2016.

- **Complete one form for each type of appeal you are filing.**
- **Please print clearly.**
- **A filing fee of \$300 is required for each type of appeal you are filing. To view the Fee Schedule, visit the Board's website.**
- **The filing fee must be paid by certified cheque or money order, in Canadian funds, payable to the Minister of Finance.**
- **If you are represented by a solicitor the filing fee may be paid by a solicitor's general or trust account cheque.**
- **Do not send cash.**
- **Professional representation is not required but please advise the Board if you retain a representative after the submission of this form.**
- **Submit your completed appeal form(s) and filing fee(s) by the filing deadline to either the Municipality or the Approval Authority as applicable. Do NOT send directly to the Ontario Municipal Board.**
- **The Municipality/Approval Authority will forward your appeal(s) and fee(s) to the Ontario Municipal Board.**
- **The *Planning Act* and the *Ontario Municipal Board Act* are available on the Board's website.**



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APPELLANT FORM (A1) PLANNING ACT

SUBMIT COMPLETED FORM TO MUNICIPALITY/APPROVAL AUTHORITY

Date Stamp - Appeal Received by Municipality

Receipt Number (OMB Office Use Only)

Part 1: Appeal Type (Please check only one box)

SUBJECT OF APPEAL	TYPE OF APPEAL	PLANNING ACT REFERENCE (SECTION)
Minor Variance	<input type="checkbox"/> Appeal a decision	45(12)
Consent/Severance	<input type="checkbox"/> Appeal a decision	53(19)
	<input type="checkbox"/> Appeal conditions imposed	
	<input type="checkbox"/> Appeal changed conditions	53(27)
	<input type="checkbox"/> Failed to make a decision on the application within 90 days	53(14)
Zoning By-law or Zoning By-law Amendment	<input checked="" type="checkbox"/> Appeal the passing of a Zoning By-law	34(19)
	<input type="checkbox"/> Application for an amendment to the Zoning By-law – failed to make a decision on the application within 120 days	34(11)
	<input type="checkbox"/> Application for an amendment to the Zoning By-law – refused by the municipality	
Interim Control By-law	<input type="checkbox"/> Appeal the passing of an Interim Control By-law	38(4)
Official Plan or Official Plan Amendment	<input type="checkbox"/> Appeal a decision	17(24) or 17(36)
	<input type="checkbox"/> Failed to make a decision on the plan within 180 days	17(40)
	<input type="checkbox"/> Application for an amendment to the Official Plan – failed to make a decision on the application within 180 days	22(7)
	<input type="checkbox"/> Application for an amendment to the Official Plan – refused by the municipality	
Plan of Subdivision	<input type="checkbox"/> Appeal a decision	51(39)
	<input type="checkbox"/> Appeal conditions imposed	51(43) or 51(48)
	<input type="checkbox"/> Failed to make a decision on the application within 180 days	51(34)

Part 2: Location Information

75 Dublin Street North, Guelph, Ontario

Address and/or Legal Description of property subject to the appeal:

Municipality/Upper tier: Guelph

Part 3: Appellant Information

First Name: _____ Last Name: _____

Rykur Holdings Inc.

Company Name or Association Name (Association must be incorporated – include copy of letter of incorporation)

Professional Title (if applicable): _____

E-mail Address: _____

By providing an e-mail address you agree to receive communications from the OMB by e-mail.

Daytime Telephone #: 519-221-6359 Alternate Telephone #: _____

Fax #: 1-888-847-8102

Mailing Address: <u>24 Crestwood Place</u>	<u>Guelph</u>
Street Address	Apt/Suite/Unit# City/Town
<u>Ontario</u>	<u>NH1E 4M3</u>
Province	Country (if not Canada) Postal Code

Signature of Appellant: _____ Date: _____
(Signature not required if the appeal is submitted by a law office.)

Please note: You must notify the Ontario Municipal Board of any change of address or telephone number in writing. Please quote your OMB Reference Number(s) after they have been assigned.

Personal information requested on this form is collected under the provisions of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, and the *Ontario Municipal Board Act*, R.S.O. 1990, c. O. 28 as amended. After an appeal is filed, all information relating to this appeal may become available to the public.

Part 4: Representative Information (if applicable)

I hereby authorize the named company and/or individual(s) to represent me:

First Name: Scott Last Name: Snider

Company Name: Turkstra Mazza Associates

Professional Title: Lawyer

E-mail Address: ssnider@tmalaw.ca

By providing an e-mail address you agree to receive communications from the OMB by e-mail.

Daytime Telephone #: 905-529-3476 Alternate Telephone #: _____

Fax #: 905-529-3663

Mailing Address: <u>15 Bold Street</u>	<u>Hamilton</u>
Street Address	Apt/Suite/Unit# City/Town
<u>Ontario</u>	<u>L8P 1T3</u>
Province	Country (if not Canada) Postal Code

Signature of Appellant: _____ Date: December 20, 2016

Please note: If you are representing the appellant and are NOT a solicitor, please confirm that you have written authorization, as required by the Board's Rules of Practice and Procedure, to act on behalf of the appellant. Please confirm this by checking the box below.



I certify that I have written authorization from the appellant to act as a representative with respect to this appeal on his or her behalf and I understand that I may be asked to produce this authorization at any time.

Part 5: Language and Accessibility

Please choose preferred language: ☒ English ☐ French

We are committed to providing services as set out in the *Accessibility for Ontarians with Disabilities Act, 2005*. If you have any accessibility needs, please contact our Accessibility Coordinator as soon as possible.

Part 6: Appeal Specific Information

1. Provide specific information about what you are appealing. For example: Municipal File Number(s), By-law Number(s), Official Plan Number(s) or Subdivision Number(s):

(Please print)

Guelph By-law (2016) – 20113
Guelph File No. ZC1612A

2. Outline the nature of your appeal and the reasons for your appeal. Be specific and provide land-use planning reasons (for example: the specific provisions, sections and/or policies of the Official Plan or By-law which are the subject of your appeal - if applicable). **If more space is required, please continue in Part 9 or attach a separate page.

(Please print)

Please see attached correspondence

THE FOLLOWING SECTIONS (a&b) APPLY ONLY TO APPEALS OF ZONING BY-LAW AMENDMENTS UNDER SECTION 34(11) OF THE *PLANNING ACT*.

- a) **DATE APPLICATION SUBMITTED TO MUNICIPALITY:** _____
(If application submitted before January 1, 2007 please use the O1 'pre-Bill 51' form.)

- b) Provide a brief explanatory note regarding the proposal, which includes the existing zoning category, desired zoning category, the purpose of the desired zoning by-law change, and a description of the lands under appeal:
**If more space is required, please continue in Part 9 or attach a separate page.

Bill 73 - This question applies only to official plans/amendments, zoning by-laws/amendments and minor variances that came into effect/were passed on or after July 1, 2016.

1. Is the 2-year no application restriction under section 22(2.2) or 34(10.0.0.2) or 45(1.4) applicable?

- a. No ☒
b. Yes

Part 7: Related Matters (if known)

Are there other appeals not yet filed with the Municipality? YES ☐ NO ☒

Are there other planning matters related to this appeal? YES ☒ NO ☐
(For example: A consent application connected to a variance application)

If yes, please provide OMB Reference Number(s) and/or Municipal File Number(s) in the box below:

(Please print)

City of Guelph OPA refusal – OP1603

Part 8: Scheduling Information

How many days do you estimate are needed for hearing this appeal? ☐ half day ☐ 1 day ☐ 2 days ☐ 3 days
☐ 4 days ☐ 1 week ☒ More than 1 week – please specify number of days: 8 - 10

How many expert witnesses and other witnesses do you expect to have at the hearing providing evidence/testimony?
Four (4)

Describe expert witness(es)' area of expertise (For example: land use planner, architect, engineer, etc.):
Planner, architect, traffic engineer, heritage planner

Do you believe this matter would benefit from mediation? YES ☒ NO ☐
(Mediation is generally scheduled only when all parties agree to participate)

Do you believe this matter would benefit from a prehearing conference? YES ☒ NO ☐
(Prehearing conferences are generally not scheduled for variances or consents)

If yes, why? To co-ordinate exchange of materials/identify parties

Part 9: Other Applicable Information **Attach a separate page if more space is required.

[illegible]

Part 10: Required Fee

Total Fee Submitted: \$ 300.00

Payment Method: ☐ Certified cheque ☐ Money Order ☒ Solicitor's general or trust account cheque

- The payment must be in Canadian funds, **payable to the Minister of Finance.**
- **Do not send cash.**
- **PLEASE ATTACH THE CERTIFIED CHEQUE/MONEY ORDER TO THE FRONT OF THIS FORM.**