

June 14, 2024

File No. 597743-1

Sent via courier and e-mail to clerk@hamilton.ca

Ms. Janet Pelon
Acting City Clerk
Hamilton City Hall
71 Main St West, First Floor
Hamilton, ON L8P 4Y5

Dear Ms. Pelon:

Re: **Zest (Town Square) Developments Inc. and Zest Communities Inc.**
393 Rymal Road West, Hamilton, Ontario
Appeal for failure to make a decision on a Zoning By-law Amendment pursuant to
subsection 34(11) of the *Planning Act*
City File No. ZAC-20 029

We are counsel for Zest (Town Square) Developments Inc. and Zest Communities Inc. ("**Zest**"). Zest is the owner of 393 Rymal Road West, Hamilton.

We write to provide our client's Notice of Appeal, referred to as the "Village Square", which occupies the area southwest of the intersection of Rymal Road West and Westland Drive (the "**Village Square**").

On July 20, 2020, Zest submitted an Official Plan Amendment, Plan of Subdivision, and Zoning By-law Amendment which included the Village Square as well as additional lands owned by Zest. These applications were deemed complete on August 19, 2020.

After extensive discussions with City and agency staff, all parties agreed to table the Official Plan Amendment and Plan of Subdivision and focus on the Zoning By-law Amendment applicable to the Village Square. In May 2023, Zest submitted an updated Zoning By-law Amendment for the Village Square, inclusive of supporting studies and materials. After numerous further discussions with City staff, a further revised Village Square Zoning By-law Amendment was submitted in April 2024 (the "**ZBA**").

The ZBA seeks to rezone the Village Square to permit the development of a two-storey commercial/office building at the northern frontage at Rymal Road West and Bishop Ryan Way, multiple four- to six-storey residential buildings surrounding the square, and low rise townhomes along the eastern and southern periphery.

No decision has been made by City Council on the ZBA. On behalf of Zest, we are appealing Council's failure to make a decision on the ZBA.

Site Background

The Village Square area is mostly undeveloped and open in nature. Currently, Bishop Redding Trail and Bishop Tonnos Way extend into this area leading to the Edelweiss Barn, a two-storey common community building and maintenance facility. A map identifying the Village Square is included as an enclosure.

The Village Square is part of a broader community, under the same ownership, known as the St. Elizabeth Village. St. Elizabeth Village is 46.1 hectares, and includes a private road network serving commercial, institutional, residential, and accessory uses. The St. Elizabeth Village currently includes 556 Life Lease townhouses and apartments, a multi-storey, multi bed assisted-living building, a 4-storey commercial/retail building (the Village Centre), St. Elizabeth of Hungary Catholic Church, and a 5-storey 76 unit building.

Reasons for Appeal

Zest has been working for several years on a Master Plan for the entirety of St. Elizabeth Village. As noted above, this includes extensive work and various resubmissions for an Official Plan Amendment, Plan of Subdivision and the ZBA. In 2023, the parties mutually agreed to pause the larger Master Plan, to scope the application solely to the ZBA for the Village Square lands. Notwithstanding the attempt to scope and advance the ZBA, no ZBA recommendation Report has been provided to Council.

St. Elizabeth Village is in a *Settlement Area* and is well served by the Hamilton Street Railway, which provide direct access to Mohawk College and the MacNab Terminal, which provides direct access to GO Transit. The site is located along the future 'S' line within the BLAST network, identified as "Potential Higher Order Transit".

This appeal is specific to the ZBA for the Village Square, which is 4.26 hectares in area. The ZBA would facilitate the development of 2,024 square metres of commercial space and 430 residential units, consisting of 374 apartments, 42 one and a half storey townhouses and 14 three storey townhouse. Also included is parking for 547 vehicles, 76 short term bicycles, and 216 long term bicycles.

The ZBA is consistent with and conforms to all Provincial and local policies. This includes consistency with the Provincial Policy Statement, including Policy 1.1.1 related to the promotion of healthy, livable, and safe communities; Policy 1.1.3.1 related to *Settlement Areas* being the focus of growth and development; Policy 1.1.3.2 related to the efficient use of land and resources; Policy 1.1.3.3 which related to achieving transit supportive communities; Policies 1.2.1 and 1.2.4 related to achieving intensification targets; Policies 1.4.1 and 1.4.3 related to providing a variety of housing options and efficient residential intensification; and Policy 1.7.1 related to long term economic prosperity including housing provision in response to dynamic market-based needs.

As it relates to *A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2019*, as amended, the ZBA conforms to Policy 2.2.2.1 related to the focusing of growth in delineated Built-Up areas; Policy 2.2.6.1 related to increasing residential intensification targets and providing a range of densities and housing types within Built-up Areas; Policy 2.2.2 related to the residential intensification target within Built-up Areas; and Policy 2.2.4 related to supporting increased density in transit supportive areas.

The ZBA conforms to the Hamilton Official Plan, including Policy E.3.0, which relates to Neighbourhood composition and appropriate scales of development and design; and Policy E.2.6 related to the permitted

uses within the Neighbourhoods designation, which include residential dwellings, including second dwelling units and units with supports; open space and parks; local community facilities/services; and local commercial uses.

For many years, Zest has been working with City staff to responsively address comments received, in the interest of developing the Village Square consist with local and Provincial policy. Notwithstanding the filing of this appeal, Zest seeks to continue to work with City Staff to resolve any remaining outstanding issues, without the need for a contested Hearing. We welcome the opportunity for further discussions with the City.

Enclosures

Enclosed with this Notice of Appeal are the following:

1. A Site Plan showing the Village Square;
2. An Ontario Land Tribunal Appeal Form (A1); and
3. A cheque in the amount of \$1,100.00 representing the filing fees for the Tribunal.

Kindly confirm receipt of this Notice of Appeal package by reply e-mail.

Yours truly,

Dentons Canada LLP



Isaiah Banach
Counsel
IB/mj

Copy Devon M. Morton, Senior Planner, City of Hamilton
Sarah Knoll, Senior Planner, GSP Group
Client

Encl.



Site Concept 2 - Mixed Housing		Site Area	4.26 ha.
■	Retail/ Comm'l	2,024 sqm (21,786sf)	
■	4 to 6 storey apartments	374 Units	
■	1-1/2 Storey Bungalow Towns	42 Units	
■	3 Storey Towns	14 Units	
TOTAL Unit Count		430 Units	
Surface Parking:			
	Lot 1	119 Spaces	
	Lot 2	20 Spaces	
	139 Total		
Underground Parking:			
	Building C	15 Spaces	
	UG Lot 1	207 Spaces	
	UG Lot 2	74 Spaces	
	296 Total		
Towns Parking:			
	2 per Town	112 Spaces	
TOTAL Parking Count		547 Spaces	
Retail Parking Required - 81 cars			
Medical Clinic: 1/16 sq.m (63 Cars)			
Office: 1/30 sq.m of GFA of the portion over 450 sq.m (18 Cars)			
Retail Parking Provided - 81 cars			
Towns Parking Provided - 112 Spaces (2/Town)			
Residential Parking Provided - 354 Spaces			
Barrier Free Required - 13 Cars			
Barrier Free Provided - 14 Cars			
Short Term Bike Parking Provided - 76 Stalls			
Long Term Bike Parking Provided - 216 Stalls			
Total Amenity Required - 2,192 m2			
Building A Amenity: 336 m2			
Building B Amenity: 336 m2			
Building C Amenity: 650 m2			
Building D Amenity: 632 m2			
Building E Amenity: 238 m2			
Building Coverage: 11,850 m2 (27%)			
Landscape Coverage : 20,227 m2 (47%)			

Legend	
—	Property Line
—	Setbacks
—	Outdoor Amenity
—	Bike Parking





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

Appeal Form (A1)

**Municipal/Approval
Authority Date Stamp**

**Receipt Number
(OLT Office Use Only)**

**Date Stamp – Appeal
Received by OLT**

**OLT Case Number
(OLT Office Use Only)**

You may be able to submit your appeal online using our new e-file service if:

- the approval authority you are submitting your appeal to is registered on e-file;
or
- you are appealing directly to the Ontario Land Tribunal

Please visit our [e-file](#) page to learn more.

Please complete this Appeal Form by following the instructions in the companion document titled "Appeal Form Instructions". Please read **both** documents carefully to ensure you submit the correct information and complete this form correctly.

There are guides available for review on the Tribunal's [website](#) for different appeal types to assist you in filing an appeal.

Please review the notice of the decision you are appealing to determine the appeal deadline and the specific official with whom the appeal should be filed (e.g. Secretary-Treasurer, Clerk, Minister, Ontario Land Tribunal) prior to completing this Appeal Form. Relevant portions of the applicable legislation should also be reviewed before submitting this form. Your appeal must be filed with the appropriate authority within the appeal period as set out in the notice of the decision and applicable legislation.

Section 1 – Contact Information (Mandatory)

Applicant/Appellant/Objector/Claimant Information

Last Name:

First Name:

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

Email Address:

Daytime Telephone Number: ext.

Alternative Telephone Number:

Mailing Address:

Unit Number: Street Number:

Street Name:

P.O. Box:

City/Town:

Province:

Country: Postal Code:

Representative Information

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

Last Name:

First Name:

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

Dentons Canada LLP

Email Address(es): isaiah.banach@dentons.com

Daytime Telephone Number: 416 863 4501 ext.

Alternative Telephone Number:

Mailing Address:

Unit Number: Suite 400 Street Number: 77

Street Name: King St W

P.O. Box:

City/Town: Toronto

Province: Ontario

Country: Canada Postal Code: M5K 0A1

Note: If your representative is not licensed under the *Law Society Act*, please confirm that they have your written authorization, as required by the *OLT Rules of Practice and Procedure*, to act on your behalf and that they are also exempt under the Law Society's by-laws to provide legal services. Please confirm this by checking the box below.

I certify that I understand that my representative is not licensed under the *Law Society Act* and I have provided my written authorization to my representative to act on my behalf with respect to this matter. I understand that my representative may be asked to produce this authorization at any time along with confirmation of their exemption under the Law Society's by-laws to provide legal services.

Location Information

Are you the current owner of the subject property?

Yes No

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

393 Rymal Road West

Municipality: City of Hamilton

Upper Tier (Example: county, district, region):

Language Requirements

Do you require services in French?

Yes No

To file an appeal, please complete the section below. Complete one line for each appeal type

Subject of Appeal		Type of Appeal (Act/Legislation Name)	Reference (Section Number)
Example	Minor Variance	<i>Planning Act</i>	45(12)
1	Zoning By-law Amendment	Planning Act	34(11)
2			
3			
4			

Section 2 – Appeal Type (Mandatory)

Please select the applicable type of matter

Select	Legislation associated with your matter	Complete Only the Section(s) Below
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<input checked="" type="checkbox"/>	Appeal of <i>Planning Act</i> matters for Official Plans and amendments, Zoning By-Laws and amendments and Plans of Subdivision, Interim Control By-laws, Site Plans, Minor Variances, Consents and Severance	3A
<input type="checkbox"/>	Appeal of <i>Development Charges, Education Act, Aggregate Resources Act, Municipal Act</i> matters	3A
<input type="checkbox"/>	Appeal of or objection to <i>Ontario Heritage Act</i> matters under subsections 29, 30.1, 31, 32, 33, 40.1 and 41	3A
<input type="checkbox"/>	<i>Appeal of Planning Act</i> (subsections 33(4), 33(10), 33(15), 36(3)), <i>Municipal Act</i> (subsection 223(4)), <i>City of Toronto Act</i> (subsection 129(4)) and <i>Ontario Heritage Act</i> (subsections 34.1(1), 42(6)) matters	3A & 3B
<input type="checkbox"/>	Appeal of <i>Clean Water Act, Environmental Protection Act, Nutrient Management Act, Ontario Water Resources Act, Pesticides Act, Resource Recovery and Circular Economy Act, Safe Drinking Water Act, Toxics Reduction Act, and Waste Diversion Transition Act</i> matters	4A
<input type="checkbox"/>	Application for Leave to Appeal under the <i>Environmental Bill of Right</i>	4B
<input type="checkbox"/>	Appeal under the <i>Niagara Escarpment Planning and Development Act (NEPDA)</i>	5
<input type="checkbox"/>	Appeal of <i>Conservation Authorities Act, Mining Act, Lakes and Rivers Improvement Act, Assessment Act, and Oil, Gas and Salt Resources Act</i> matters	6
<input type="checkbox"/>	Legislation not listed above	Contact OLT before filing your appeal

Section 3A – Planning Matters

Appeal Reasons and Specific Information

Number of new residential units proposed:

Municipal Reference Number(s):

List the reasons for your appeal:

Please see the attached letter.

Has a public meeting been held by the municipality? Yes No

For appeals of Official Plans, Official Plan Amendments, Zoning By-laws and Zoning By-law Amendments, please indicate if you will rely on one or more of the following grounds:

A: A decision of a Council or Approval Authority is:

- Inconsistent with the Provincial Policy Statement issued under subsection 3(1) of the *Planning Act*
- Fails to conform with or conflicts with a provincial plan
- Fails to conform with an applicable Official Plan

And

B: For a non-decision or decision to refuse by council:

- Consistency with the provincial policy statement, issued under subsection 3(1) of the *Planning Act*
- Conformity with a provincial plan
- Conformity with the upper-tier municipality's Official Plan or an applicable Official Plan

If it is your intention to argue one or more of the above grounds, please explain your reasons:

Please see the attached letter.

Oral/Written Submissions to Council

Did you make your opinions regarding this matter known to council?

- Oral submissions at a public meeting of council
- Written submissions to council

Not applicable

Related Matters

Are there other appeals not yet filed with the Municipality? Yes No

Are there other matters related to this appeal? (For example: A consent application connected to a variance application). Yes No

If yes, please provide the Ontario Land Tribunal Case Number(s) and/or Municipal File Number(s) for the related matters:

N/A

Section 3B – Other Planning Matters

Appeal Specific Information (Continued)

Date application submitted to municipality if known (yyyy/mm/dd):

Date municipality deemed the application complete if known (yyyy/mm/dd):

Please briefly explain the proposal and describe the lands under appeal:

There are required documents and materials to be submitted to the Ontario Land Tribunal (OLT) based on the type of legislation and section you are filing under. Please see the Section 3B Checklist(s) located [here](#) and submit all documents listed.

Section 4A – Appeals under Environmental Legislation

Appeal Specific Information (Continued)

Outline the grounds for the appeal and the relief requested:

Reference Number of the decision under appeal:

Portions of the decision in dispute:

Date of receipt of Decision or Director's Order (yyyy/mm/dd):

Applying for Stay? Yes No

If Yes, outline the reasons for requesting a stay:

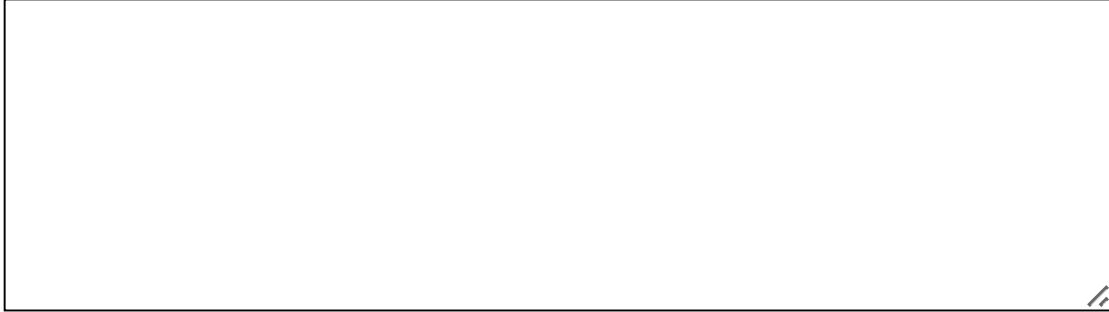
There are required documents and materials to be submitted to the Ontario Land Tribunal (OLT) based on the type of legislation and section you are filing under. Please see the [Section 4A Checklist\(s\)](#) located [here](#) and submit all documents listed on the checklist.

Section 4B – Environmental Application for Leave to Appeal

Appeal Specific Information (Continued)

Are you filing an Application for Leave to Appeal under the *Environmental Bill of Rights, 1993*? Yes No

Identify the portions of the instrument you are seeking to appeal:

A large empty rectangular box with a thin black border, intended for the user to identify the portions of the instrument they are seeking to appeal. There is a small, faint mark in the bottom right corner of the box.

Identify the grounds you are relying on for leave to appeal. Your grounds should include reasons why there is good reason to believe that no reasonable person, having regard to the relevant law and to any government policies developed to guide decisions of that kind could have made the decision; and why the decision could result in significant harm to the environment:

Outline the relief requested:

There are required documents and materials to be submitted to the Ontario Land Tribunal (OLT) based on the type of legislation and section you are filing under. Please see the [Section 4B Checklist\(s\)](#) located [here](#) and submit all documents listed on the checklist.

Section 5 – Appeal regarding Development Permit Application under the *Niagara Escarpment Planning and Development Act*

Appeal Specific Information

Development Permit Application File No:

Address or legal description of the subject property:

Reasons for Appeal: Outline the nature and reasons for your appeal. Specific planning, environmental and/or other reasons are required. (The Niagara Escarpment Plan is available on the Niagara Escarpment Commission's website (www.escarpment.org))

Section 6 – Mining Claim and Conservation Matters

Appeal Specific Information

List the subject Mining Claim Number(s) (for unpatented mining claims) and accompanying Townships, Areas and Mining Division(s) where mining claims are situated. List all "Filed Only" Mining Claims, if appropriate: (This is to be completed for *Mining Act* appeals only.)

List the Parcel and the Property Identifier Numbers (PIN), if rents or taxes apply to mining lands, if appropriate (mining claims only):

Provide the date of the Decision of the Conservation Authority or the Provincial Mining Recorder, as appropriate:

Provide a brief outline of the reasons for your application/appeal/review. If other lands/owners are affected, please include that information in the outline being provided below:

Respondent Information

Conservation Authority:

Contact Person:

Email Address:

Daytime Telephone Number: ext.

Alternative Telephone Number:

Mailing Address or statement of last known address/general area they were living and name of local newspaper if address is not available

Unit Number: Street Number:

Street Name:

P.O. Box:

City/Town:

Province:

Country: Postal Code:

There are required documents and materials to be submitted to the Ontario Land Tribunal (OLT) based on the type of legislation and section you are filing under. Please see the [Section 6 Checklist\(s\)](#) located [here](#) and submit all documents listed on the checklist.

Section 7 – Filing Fee

Required Fee

Please see the attached link to view the [OLT Fee Chart](#)

Total Fee Submitted: \$

Payment Method:

Certified Cheque Money Order Lawyer's general or trust account cheque Credit Card

If you wish to pay the appeal fee(s) by credit card, please check the box above and OLT staff will contact you by telephone to complete the payment process upon receipt of the appeal form.

DO NOT INCLUDE YOUR CREDIT CARD INFORMATION ON THIS FORM. YOU WILL BE CONTACTED TO COMPLETE YOUR PAYMENT OVER THE PHONE.

If a request for a fee reduction is being requested, please pay the minimum filing fee for each appeal and complete/submit the [Fee Reduction request form](#)


Request for Fee Reduction form is attached (if applicable – see Appeal Form Guide for more information)

Section 8 – Declaration (Mandatory)

Declaration

I solemnly declare that all the statements and the information provided, as well as any supporting documents, are true, correct and complete.

By signing this appeal form below, I consent to the collection of my personal information.

Name of Appellant/Representative	Signature of Appellant/Representative	Date (yyyy/mm/dd)
<div style="border: 1px solid black; padding: 5px;">Isaiah Banach</div>	<div style="border: 1px solid black; padding: 5px;">  </div>	<div style="border: 1px solid black; padding: 5px;">2024/06/14</div>

Personal information or documentation requested on this form is collected under the authority of the *Ontario Land Tribunal Act* and the legislation under which the proceeding is commenced. All information collected is included in the Ontario Land Tribunal (OLT) case file and the public record in this proceeding. In accordance with the *Freedom of Information and Protection of Privacy Act* and section 9 of the *Statutory Powers Procedure Act*, all information collected is available to the public subject to limited exceptions.

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 at OLT.Coordinator@ontario.ca or toll free at 1-866-448-2248 as soon as possible.

Section 9 – Filing Checklists (Mandatory)

Filing/Submitting your form and documentation

You must file your Appeal Form with the appropriate authority(s) by the filing deadline.

If the completed Section is:	Refer to the relevant checklist and submit all documents listed on the checklist when filing your Appeal Form.
Section 3B	Review the Section 3B Checklist(s) and attach all listed documents.

Section 4A	Review the Section 4A Checklist(s) and attach all listed documents.
Section 4B	Review the Section 4B Checklist(s) and attach all listed documents.

<p>If the completed Section is:</p>	<p>You must file with the following:</p>	
<p>Section 3A</p>	<p>Municipality or the Approval Authority/School Board</p> <p><i>*If you are filing under the Ontario Heritage Act, including under s. 34.1(1), please carefully review the specific section of that legislation to determine if your appeal needs to be filed with the Tribunal in addition to the Municipality or Approval Authority.</i></p>	
<p>Section 3A & 3B or Section 4A or Section 4B or Section 6</p>	<p>Ontario Land Tribunal 655 Bay Street, Suite 1500 Toronto, ON M5G 1E5</p> <p>Phone: 416-212-6349 1-866-448-2248 Website: www.olt.gov.on.ca</p>	
<p>Section 5A or 5B</p>	<p>For the Areas of: Dufferin County (Mono) Region of Halton Region of Peel Region of Niagara City of Hamilton</p> <p>File with: NIAGARA ESCARPMENT COMMISSION 232 Guelph Street, 3rd Floor Georgetown, ON L7G 4B1</p> <p>Phone: 905-877-5191 Fax: 905-873-7452 Website: www.escarpment.org Email: necgeorgetown@ontario.ca</p>	<p>For the Areas of: Bruce County Grey County Simcoe County Dufferin County (Mulmur, Melancthon)</p> <p>File with: NIAGARA ESCARPMENT COMMISSION 1450 7th Avenue Owen Sound, ON N4K 2Z1</p> <p>Phone: 519-371-1001 Fax: 519-371-1009 Website: www.escarpment.org Email: necgeorgetown@ontario.ca</p>

NOTE: Please review the notice of the decision you are appealing to determine the appeal deadline and the specific official with whom the appeal should be filed (e.g. Secretary-Treasurer, Clerk, Minister, Ontario Land Tribunal).

NOTE: Relevant portions of the applicable legislation should be reviewed before submitting this form. Please ensure that a copy of this Appeal Form is served in accordance with the requirements of the applicable legislation.

DENTONS CANADA LLP

BMO LLP Digital Cheque - TO

DATE: June 13, 2024 PAYEE: Minister of Finance VENDOR #: F009236 CHEQUE # 1006782

VOUCHER	INVOICE	FILE #	DESCRIPTION	AMOUNT
1596912	081123	597743-000001		1,100.00
TOTAL				\$1,100.00

DENTONS CANADA LLP

DATE: June 13, 2024 PAYEE: Minister of Finance VENDOR #: F009236 CHEQUE # 1006782

VOUCHER	INVOICE	FILE #	DESCRIPTION	AMOUNT
1596912	081123	597743-000001		1,100.00
TOTAL				\$1,100.00

THE FACE OF THIS DOCUMENT HAS A COLOURED BACKGROUND. THE BACK OF THIS DOCUMENT CONTAINS A WATERMARK.

DENTONS CANADA LLP

77 King St West, Suite 400, TD Centre
Toronto, ON M5K 0A1

Bank of Montreal
11th Floor, 100 King St West
Toronto, Ontario M5X 1A3

1006782

13-06-2024

DATE DD MM YYYY

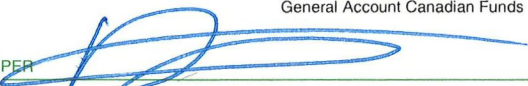
PAY
ONE THOUSAND ONE HUNDRED AND 00/100 Dollars

\$ 1,100.00

TO THE ORDER OF

Minister of Finance

General Account Canadian Funds

PER 

PER _____