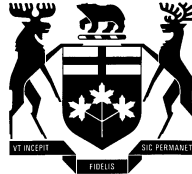


ISSUE DATE:

**April 9, 2014**



Ontario

Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

PL130601  
PL131089  
PL130909  
PL130630  
PL131311

IN THE MATTER OF subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: City of Hamilton  
Applicant: Fengate Capital Management Ltd.  
Subject: Consent to sever  
Property: 1400 Upper James Street  
Address/Description:  
Municipality: City of Hamilton  
Municipal File No.: B-27/13  
OMB Case No.: PL130601  
OMB File No.: PL130601

LPF Realty Retail Inc. and Fengate Capital Management Ltd. have appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the City of Hamilton to redesignate lands at 1400 Upper James Street from Residential to Open Space Commercial to permit a Storm Water Management Facility and extension of commercial parking area  
Approval Authority File No. OPA-12-012  
OMB Case No. PL131089  
OMB File No. PL131089

LPF Realty Retail Inc. and Fengate Capital Management Ltd. have appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 05-200 of the City of Hamilton to rezone lands respecting 1400 Upper James Street from Urban Protected Residential "C" District Restricted Community Shopping & Commercial "HH" District to Conservation/Hazard Land (P5) Zone and Restricted Community Shopping & Commercial ("HH) to permit a Storm Water Management Facility and extension of commercial parking area  
OMB Case No. PL131089  
OMB File No. PL131090

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: DiCenzo Construction Company Limited  
Appellant: LPF Realty Retail Inc.  
Subject: By-law No. 13-126  
Municipality: City of Hamilton  
OMB Case No.: PL130630  
OMB File No.: PL130630

IN THE MATTER OF subsection 51(39) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: DiCenzo Construction Company Limited  
Appellant: LPF Realty Retail Inc.  
Subject: Proposed Plan of Subdivision  
Property: 1155 West 5th Street  
Address/Description:  
Municipality: City of Hamilton  
Municipal File No.: 25T-201202  
OMB Case No.: PL130630  
OMB File No.: PL130741

IN THE MATTER OF subsection 51(39) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: DiCenzo Construction Company Limited  
Appellant: LPF Realty Retail Inc.  
Subject: Proposed Plan of Condominium  
Property: 1155 West 5th Street  
Address/Description:  
Municipality: City of Hamilton  
Municipal File No.: 25CDM-201201  
OMB Case No.: PL130630  
OMB File No.: PL130742

DiCenzo Construction Company Limited has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 6593 of the City of Hamilton to rezone lands respecting 1125 West Fifth Street from "AA" (Agricultural District) to "RT-10"(Townhouse District) to permit the proposed townhouse development  
OMB File No. PL130909

DiCenzo Construction Company Limited has appealed to the Ontario Municipal Board under subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from the failure of the City of Hamilton to make a decision respecting a proposed plan of subdivision on lands respecting 1125 West Fifth Street in the City of Hamilton (Approval Authority File No. 25T2012-06)  
OMB File No. PL130910

1804487 Ontario Inc. has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's neglect to enact a proposed amendment to the Official Plan for the City of Hamilton to redesignate lands 1041 West 5<sup>th</sup> Street to permit the development of a Medical Centre, Residential Care Facility and a Place of Worship  
Approval Authority File No. OPA-12-024  
OMB File No. PL131311

1804487 Ontario Inc. has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's neglect to enact a proposed amendment to Zoning By-law 6593 of the City of Hamilton to rezone lands respecting 1041 West 5<sup>th</sup> Street from "AA" Agricultural to "I3" Major Institutional to permit the development of a Medical Centre, Residential Care Facility and a Place of Worship  
OMB File No. PL131312

**APPEARANCES:**

**Parties**

**Counsel**

1804482 Ontario Ltd. ("Sonoma".)

D. Baker

DiCenzo Construction Company Limited  
("DCCL")

S. Zakem

LPF Realty Retail Inc ("LPF") and Fengate  
Capital Management Ltd. ("Fengate")

D. Tang

City of Hamilton ("the City")

M. Kovacevic, L. Magi

1804487 Ontario Inc. ("487") and  
A. De Santis Developments Ltd ("De Santis")

N. Smith

**Participant**

Michelle Lane (not in attendance)

**MEMORANDUM OF ORAL DECISION DELIVERED BY BLAIR S. TAYLOR ON  
APRIL 2, 2014 AND ORDER OF THE BOARD**

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**INTRODUCTION**

[1] This was the second prehearing of the Board dealing with a number of separate files that are being administered collectively, but are not consolidated. The description of each matter is contained within the Board decision issued December 10, 2013, from the first prehearing.

[2] The third prehearing is set for May 5, and 6, 2014, and the Board has set the matters down for a three week hearing commencing August 11, 2014.

**SETTLEMENT**

[3] At the commencement of the prehearing, the Board was advised by counsel for LPF and Fengate that a settlement had been reached with the City concerning its matters, and that draft zoning by-laws had been very recently circulated to the parties. One party indicated opposition to the settlement, and another indicated that it had no instructions on the settlement.

[4] As the matters are being collectively administered but not consolidated, the Board will hear the proposed settlement on May 5, 2014. The City will disclose to all parties and participants, on or before April 8, 2014, the draft zoning by-laws, the Minutes of Settlement and a description of the location and size of land to be acquired by the City.

[5] For the hearing, all parties will serve and file witness statements at least ten days in advance of the hearing (i.e. Friday, April 25, 2014).

[6] The Board understands that one day will be sufficient for the settlement hearing, and this matter will be the first substantive matter heard on May 5, 2014, subject to any other motions or matters the then presiding Board member may determine to deal with beforehand.

**487**

[7] Nancy Smith on behalf of her client 487 and its property at 1041 West 5 Street, (PL131311) requested that her client's matter also be added to these matters that are being collectively administered. She advised that she had spoken with counsel and was of the understanding that the three week hearing set down for August 11, 2014 could accommodate her client's matter.

[8] The Board will add PL131311 to the other matters being collectively administered, and include the appeal of 487 in the three week hearing commencing August 11, 2014.

[9] DCCL and LPF and Fengate were granted party status in PL131311.

[10] De Santis was also added as a party in PL131311.

## **PARTICIPANTS**

[11] As this was the first prehearing for 487, members of the public were in attendance and upon hearing of the collective administration of these matters, sought participant status for all the matters being collectively administered.

[12] On consent of the parties, Robert De Han, Robert J. Morris, and Barton Stone United Church were added as participants to all the matters.

## **MOTION TO DISMISS**

[13] The Motion to Dismiss brought by Sonoma with regard to the appeals by DCCL was adjourned on consent to the next prehearing of May 5 and 6, 2014.

[14] De Santis was added as a participant to PL130630 by the Board, and required to file a Response to the Motion to Dismiss on or before April 11, 2014, and serve all parties.

## **SONOMA**

[15] Mr. Tang indicated that his client will be withdrawing its appeals against Sonoma and will confirm this by letter to the Board with copies to all parties.

**CONSOLIDATION?**

[16] Counsel for DCCL indicated that he may bring a motion for consolidation of all these matters.

[17] The next prehearing is set for **May 5 and 6, 2014** at:

**OMB Hearing Room #6  
McMaster Learning Centre  
50 Main Street, Main Floor  
Hamilton, ON**

[18] No further notice is required.

[19] I am not seized.

**ORDER**

[20] The Board so orders.

“Blair Taylor”

BLAIR TAYLOR  
MEMBER