

ISSUE DATE:

December 10, 2013



Ontario
Ontario Municipal Board
Commission des affaires municipales de l'Ontario

PL130601
PL131089
PL130909
PL130630

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

PL130601
PL131089
PL130909
PL130630

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

APPEARANCES:

Parties

Counsel/Agent*

1804482 Ontario Ltd. ("442 Ltd.)

Denise Baker

DiCenzo Construction Company Limited
("DCCL")

Steven Zakem

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

David Tang

City of Hamilton ("City")

Michael Kovacevic

MEMORANDUM OF ORAL DECISION DELIVERED BY STEVEN STEFANKO ON NOVEMBER 22, 2013 AND ORDER OF THE BOARD

[1] At this prehearing, four separate Board files were dealt since they are and will continue to be administered collectively.

[2] File PL130630 involves a zoning by-law amendment and draft plans of subdivision and condominium approved by the City. The property is 1155 West 5th

Street and the applications have been brought by 442 Ltd. The approvals have been appealed by DCCL.

[3] File PL130909 involves a zoning by-law amendment and a draft plan of subdivision. The affected property is 1125 West 5th Street and the applications have been brought and appealed by DCCL.

[4] File PL131089 deals with an official plan amendment and a zoning by-law amendment brought and appealed by LPF and Fengate. The property involved is 1400 Upper St. James Street.

[5] And lastly, file PL130601 is a consent application brought by Fengate which relates to files PL 130909 and PL131089. The City has appealed the consent which was obtained.

[6] All properties involved are in close proximity to one another and, as a result, the collective administrative approach to the various files makes eminent sense at this point.

[7] At this proceeding a number of matters were discussed and agreed upon. Based on the submissions of counsel, it is ordered that:

(a) 1804487 Ontario Inc. and A.De Santis Developments Ltd. are hereby made parties to files PL130909 and PL131089. They are represented by Nancy Smith and Anna Toumanians of the Turkstra, Mazza law firm.

(b) DCCL is hereby made a party to files PL131089 and PL130601.

(c) LPF and Fengate are hereby made parties to file PL 130909.

(d) Michelle Lane is hereby made a participant to file PL 130909.

(e) Further prehearings shall be held on April 2-3, 2014 and May 5-6, 2014 with proceedings on April 2 and May 5, 2014 commencing at 10 a.m. at:

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

(f) A three week hearing which, at this point, includes all files, is scheduled to begin August 11, 2014 at 10 a.m. at:

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

[8] In relation to the prehearings and hearing referenced above, the City shall make the necessary room arrangements. No further notice is required.

[9] I am not seized.

“Steven Stefanko”

STEVEN STEFANKO
VICE CHAIR