

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



**ISSUE DATE:** February 13, 2015

**CASE NO.:** PL130909

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 No. 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 Case No. PL130909

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)

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OMB File No. PL130910

Heard: Written Submissions

**Parties**

DiCenzo Construction Company Limited

1804487 Ontario Inc.

A. De Santis Developments Ltd.

1804482 Ontario Ltd.

City of Hamilton

**AMENDING DECISION DELIVERED BY SUSAN de AVELLAR SCHILLER AND  
ORDER OF THE BOARD**

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[1] On December 2, 2014 the Board issued its decision on two zoning by-law amendments, a draft plan of subdivision and conditions of draft plan approval for a development proposed by DiCenzo Construction Company Limited (“DCCL”) for lands located at 1125 West 5<sup>th</sup> Street in the City of Hamilton (“City”).

[2] Attachment 1 to that decision set out the amendment to By-law No. 05-200.

[3] The amendment issued by the Board as Attachment 1 was contained in Schedule J to the minutes of settlement (“MOS”) that were filed as Exhibit 3 in those proceedings.

[4] The MOS were signed by the City, DCCL, 1804482 Ontario Ltd. (“Sonoma”) and 1804487 Ontario Inc.

[5] A. De Santis Developments Ltd. (“De Santis”) did not sign the MOS but Counsel to De Santis advised the Board that it would call no evidence and take no further part in those proceedings.

[6] The Board heard independent expert opinion evidence in land use planning matters from Stephen Fraser who testified in support of the amendment found in Schedule J.

[7] Following the issuance of the Board’s decision, Counsel to DCCL realized there appeared to be a typographical error in Schedule J. The schedule to the amendment correctly identified Block 4 as lands to be zoned Conservation/Hazard Lands (P5). The language of the amendment incorrectly referred to Block 1 when the reference should have been Block 4.

[8] DCCL, with the consent of the City and Sonoma, has asked the Board to issue an amending decision that corrects this error.

[9] The Board was advised by Counsel to DCCL that Counsel to 1804487 Ontario Inc. changed subsequent to the issuance of the Board's decision and that 1804487 Ontario Inc. is now represented by Millar Alexander Barristers & Solicitors.

[10] The Board was advised by Counsel to DCCL that e-mails were sent to Mr. Millar's office on December 12 and December 24, 2014, attaching copies of the requested amendment but no response was received.

[11] Counsel to DCCL further advised the Board that Mr. Millar's office was telephoned on January 15, 2015 regarding the requested amendment, that the call was directed to Mr. Millar's voice-mail with a message left requesting a return call but no return call was received.

[12] In that the Board heard independent expert opinion evidence in support of the amendment, and in that it was filed as Schedule J to the MOS which were filed as an exhibit in the hearing of the merits, the Board directed DCCL to file an affidavit from Mr. Fraser that addressed the question of whether the requested change altered in any way Mr. Fraser's expert opinion evidence in support of the proposed amendment.

[13] Mr. Millar's office was copied on the covering letter and affidavit of Stephen Fraser that was sent to the Board in response to the Board's direction. The Board was advised that Counsel for DCCL received no response from Mr. Millar and the Board has received no objection from Counsel to 1804487 Ontario Inc. with regard to the proposed change to the amendment.

[14] The Board is satisfied that multiple reasonable and appropriate attempts were made to ensure that 1804487 Ontario Inc. was fully informed of the DCCL request and

that 1804487 Ontario Inc. had ample opportunity to comment thereon, and did not do so.

[15] Board Rule 108 permits the correction of minor errors:

**108. Correcting Minor Errors** The Board may at any time and without prior notice to the parties correct a technical or typographical error, error in calculation or similar minor error made in a decision or order...

[16] Section 88 of the *Ontario Municipal Board Act*, R.S.O. 1990 c. O.28, states:

**88.** Upon any application to the Board, the Board may make an order granting the whole, or part only, of the application, or may grant such further or other relief in addition to, or in substitution for, that applied for as to the Board may appear just and proper as fully in all respects as if the application had been for such partial, other, or further relief. R.S.O. 1990, c. O.28, s. 88.

[17] Having reviewed the requested correction and the supporting affidavit materials, the Board is satisfied that a correction should be made.

## ORDER

[18] The Board orders that the Decision and Order issued on December 2, 2014 is hereby amended by replacing Attachment “1” to that decision with Attachment “1” to this decision and in all other respects the Decision remains the same.

*“Susan de Avellar Schiller”*

SUSAN de AVELLAR SCHILLER  
VICE-CHAIR

**ATTACHMENT 1**

**Authority:** Ontario Municipal Board Case  
No. PL130601, PL131089,  
PL130909, PL130630

**Bill No.**

**Ontario Municipal Board**

A constituent tribunal of Environment and Land Tribunals Ontario  
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

**CITY OF HAMILTON**

**BY-LAW NO. \_\_\_\_\_**

**To Amend Zoning By-law No. 05-200 as Amended,  
Respecting the Lands Located at 1125 West 5<sup>th</sup> Street (Hamilton)**

**WHEREAS** the City of Hamilton has in force several Zoning By-laws which apply to the different areas incorporated into the City by virtue of the City of Hamilton Act, 1999, S.O. 1999 Chap.14;

**AND WHEREAS** the City of Hamilton is the lawful successor to the former Municipalities identified in Section 1.7 of By-law 05-200;

**AND WHEREAS** Zoning By-law No. 05-200 was enacted on the 25<sup>th</sup> day of May, 2005;

**AND WHEREAS** the Council of the City of Hamilton, in adopting Item 10 of Report 10-007 of the Planning Committee, at its meeting held on the 14th day of April, 2010, recommended that Zoning By-law No. 05-200, be amended as hereinafter provided;

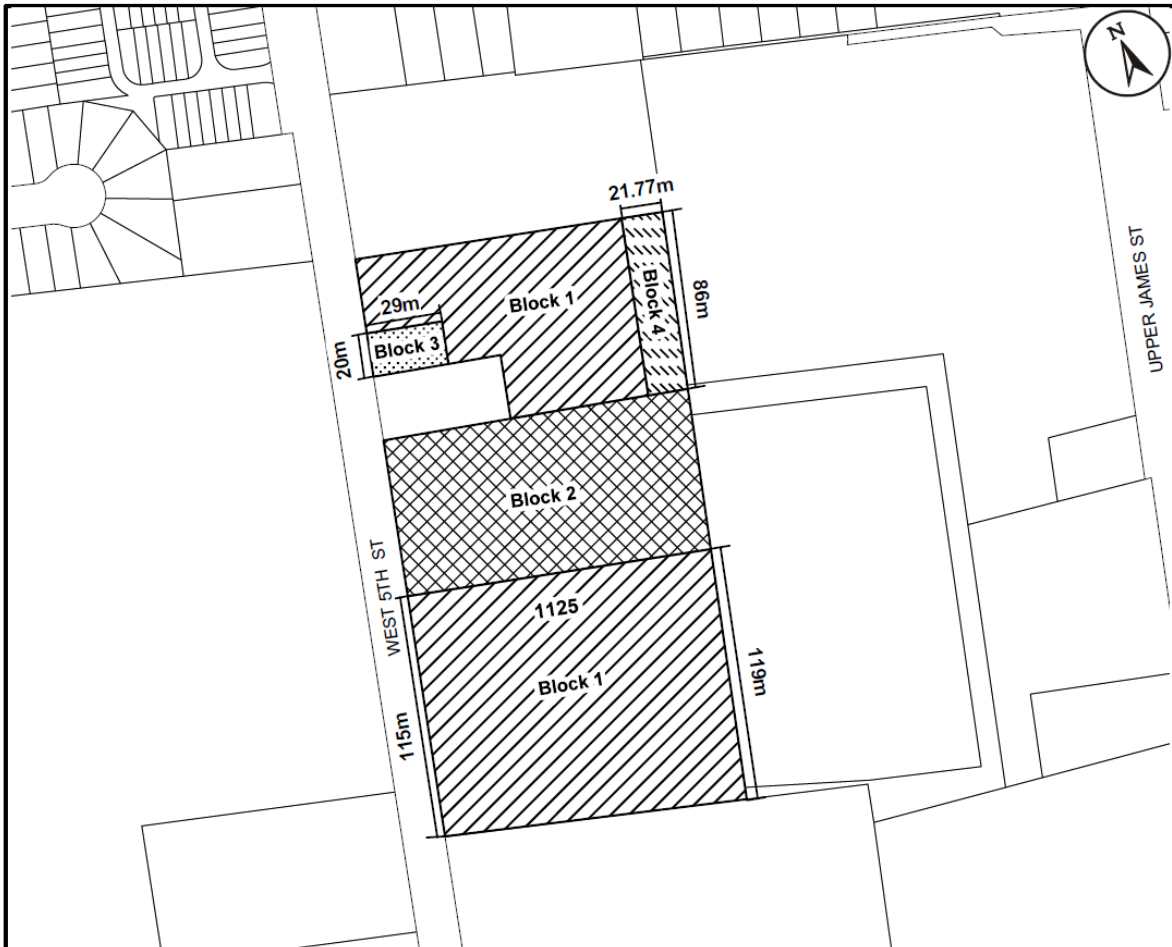
**AND WHEREAS** the by-law is in conformity with the Urban Hamilton Official Plan approved in accordance with provisions of the Planning Act.

**NOW THEREFORE** the Council of the City of Hamilton enacts as follows:

1. The Map No. 1342 of Schedule "A" to Zoning By-law No. 05-200, is amended, by incorporating Conservation / Hazard Lands (P5) Zone boundaries, for

the, applicable lands, the lands, the extent and boundaries of which are shown on Schedule "A" as "Block 4" annexed hereto and forming part of this By-law.

2. That the Clerk is hereby authorized and directed to proceed with the giving of notice of the passing of this By-law, in accordance with the Planning Act.
3. That Zoning By-law No. \_\_\_\_\_ shall come into force and be deemed to have come into force in accordance with Subsection 34(21) of the Planning Act, either upon the date of passage of the By-law or as provided by the said Subsection.



<p>This is Schedule "A" to By-Law No. 14-</p> <p>Passed the ..... day of ....., 2014</p>	<p>-----</p> <p style="text-align: center;">Mayor</p> <p>-----</p> <p style="text-align: center;">Clerk</p>
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<h2 style="margin: 0;">Schedule "A"</h2> <p style="margin: 10px 0 0 0;">Map Forming Part of By-Law No. 14-_____</p> <p style="margin: 10px 0 0 0;">to Amend By-law No. 05-200</p>		<p><b>Subject Property</b> 1125 West 5th Street</p> <ul style="list-style-type: none"> <li style="margin-bottom: 10px;"> <b>Block 1</b> - Refer to By-law 6593                 </li> <li style="margin-bottom: 10px;"> <b>Block 2</b> - Refer to By-law 6593                 </li> <li style="margin-bottom: 10px;"> <b>Block 3</b> - Refer to By-law 6593                 </li> <li style="margin-bottom: 10px;"> <b>Block 4</b> - Lands to be Zoned conservation/Hazard Lands (P5) Zone                 </li> </ul>
<p><b>Scale:</b> N.T.S.</p>	<p><b>File Name/Number:</b> ZAC-12-067 &amp; 25T-201206</p>	<p><b>Hamilton</b></p>
<p><b>Date:</b> August 12, 2014</p>	<p><b>Planner/Technician:</b> EJVS</p>	
<p>PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT</p>		