

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario

14-304

Attachment 1

14-305

Attachment 2

ISSUE DATE: August 22, 2014



AUG 26 2014

LEGAL

CASE NO(S):

PL130601
PL131089
PL130630
PL130909
PL131311

PROCEEDING COMMENCED UNDER 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 Address/Description: 1400 Upper James Street
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

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

PL130601
 PL131311
 PL131089
 PL130630
 PL130909

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

PROCEEDING COMMENCED UNDER subsection 51(39) of the *Planning Act*,
 R.S.O. 1990, c. P.13, as amended

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

PROCEEDING COMMENCED UNDER subsection 51(39) of the *Planning Act*,
 R.S.O. 1990, c. P.13, as amended

Appellant: DiCenzo Construction Company Limited
 Subject: Proposed Plan of Condominium
 Property Address/Description: 1155 West 5th Street
 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 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)

OMB Case No. PL130909
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 5th 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 Case No. PL131311

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 5th 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 Case No. PL131311

OMB File No. PL131312

APPEARANCES:

<u>Parties</u>	<u>Counsel</u>
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 ("City")	M. Kovacevic and M. Minkowski
1804487 Ontario Inc. ("487") and A. De Santis Developments Ltd. ("De Santis")	N. Smith

**MEMORANDUM OF ORAL DECISION DELIVERED BY SUSAN de AVELLAR
SCHILLER JULY 8, 2014 AND ORDER OF THE BOARD**

INTRODUCTION

- [1] This is the fourth pre-hearing in these proceedings.
- [2] These several files have been grouped to be heard together but are not consolidated.
- [3] The Board dealt with two matters at this pre-hearing:
1. a settlement dealing with certain LPF Realty Retail Inc. ("LPF") and Fengate Capital Management Ltd. ("Fengate") matters specific to cases PL130601 and PL131089 and
 2. finalization of the Procedural Order to govern the hearing of the merits on the remaining matters, specifically PL131311, PL130630 and PL130909.

SETTLEMENT HEARING: CASES PL130601 AND PL131089

- [4] At the last pre-hearing the Board was advised that the City of Hamilton ("City") and LPF had reached a settlement dealing with case numbers PL130601 and PL131089.
- [5] DiCenzo Construction Company Limited ("DCCL") is a party to both cases. 1804487 Ontario Inc. ("487") and A. De Santis Developments Ltd. ("De Santis") are parties to PL131089. No settlement was presented to the Board at that appearance since the parties were still in discussions to determine if a full settlement is achievable between all parties to these two cases. The parties have now reached a full settlement and no interest appeared in opposition.

[6] The Board had before it the affidavit of George T. Zajac, a full Member of the Canadian Institute of Planners and a Registered Professional Planner qualified to provide independent expert land use planning opinion evidence in these proceedings.

[7] LPF owns the subject lands, municipally known as 1400 Upper James Street.

[8] These lands are currently vacant and abut an existing commercial plaza. The proposal is to develop an area beside and behind the existing plaza for 165 parking spaces. This expanded parking will allow for improvements to the truck parking area as well as accommodate parking for plaza tenants.

[9] The proposal also includes the development of a storm water management pond on a portion of the lands.

[10] The subject lands are governed by two zoning by-laws. To implement this proposal, LPF applied for an official plan amendment, amendments to the two applicable zoning by-laws, and for consent to convey the lands for the storm water management pond.

[11] Two by-laws apply to the subject lands as a result of the City of Hamilton being the successor to certain area municipalities including the former Corporation of the City of Hamilton. By-law No. 6593 is the by-law of the former Corporation of the City of Hamilton; By-law No. 05-200 is the by-law of the City of Hamilton.

[12] LPF and Fengate appealed the proposed official plan amendment and the two proposed zoning by-law amendments to this Board.

[13] Consent to convey had been given by the City of Hamilton Committee of Adjustment. The City appealed that consent to this Board.

[14] The Urban Hamilton Official Plan (“UHOP”) came into effect for these lands after the application was made for an amendment to the former official plan. The UHOP designations permit the proposed uses. The application for an official plan amendment is no longer needed. LPF and Fengate now withdraw their appeal of City Council’s refusal or neglect to enact the proposed official plan amendment.

[15] LPF has agreed to sell the lands for the proposed storm water management pond to the City. Since the transaction is with the City, consent to convey is no longer required.

[16] At the request and on consent of the parties, the City’s appeal is allowed and the application for consent is refused.

[17] The Provincial Policy Statement (“PPS”) and the Growth Plan for the Greater Golden Horseshoe (“GGH”) both emphasize the importance of an efficient use of land and resources and direct growth to settlement areas.

[18] The subject lands are within a settlement area. The proposal enhances the efficient use of the lands. The conveyance of the lands for the proposed storm water management facility enables the development of appropriate infrastructure to serve the community.

[19] Taken together, the Board finds that the proposed zoning by-law amendments will result in a development that appropriately implements matters of provincial interest, as set out in s. 2 of the *Planning Act*, R.S.O. 1990, c. P.13 (“Act”), is consistent with the PPS, conforms to the GGH and conforms to the UHOP. In addition, the Board has had regard to the decision of Council to enter into Minutes of Settlement and support the proposed zoning by-law amendments.

[20] Zoning By-law No. 05-200 is amended in accordance with Attachment 1 to this

decision.

[21] Zoning By-law No. 6593 is amended in accordance with Attachment 2 to this decision.

[22] LPF had previously withdrawn its appeals in case PL130630, as noted in the Board's decision arising from the last pre-hearing.

[23] At this pre-hearing, LPF and Fengate are withdrawing as parties to PL130909 and to PL131311 and have advised the Board that they will take no further part in any hearing of the merits in these cases.

PRE-HEARING FOR CASES PL130630, PL130909 AND PL131311

[24] The Board issued a Procedural Order previously when these three cases were being heard together with the two cases dealt with in the settlement hearing outlined above.

[25] In light of ongoing settlement discussions regarding the LPF and Fengate matters, the Board agreed to delay the filing of the Issue List and the Order of Evidence to govern the hearing for these three cases.

[26] The remaining parties for these three cases have now agreed on the Issue List, found at Attachment 3 to this decision.

[27] The parties have also agreed on an order of evidence for these three cases, subject two conditions.

[28] The first condition is that the agreement on the order of evidence is without prejudice to 1804482 Ontario Ltd. ("Sonoma") seeking permission from the Board to

proceed with the hearing of its matters notwithstanding any request for adjournment being made by another party.

[29] The second condition mirrors the first in that the other parties all agree that the order of evidence will not be cited or used to counter a request by Sonoma to proceed in the event that the circumstances of the first condition are triggered.

[30] The order of evidence is also found at Attachment 3 to this decision.

[31] Subsequent to the July 8 appearance, but prior to the issuance of these written reasons, the parties advised the Board that they are engaged in settlement discussions and sought relief on certain filing dates and agreed to delay the start of the hearing to August 14 from August 11.

ORDER

[32] The Board orders that:

1. The City of Hamilton appeal in case PL130601 is allowed and the application for consent is refused.
2. The appeal by LPF Realty Retail Inc. and Fengate Capital Management Ltd. regarding City of Hamilton Zoning By-law No. 05-200 is allowed in part and By-law No. 05-200 is amended in accordance with Attachment 1 to this decision.
3. The appeal by LPF Realty Retail Inc. and Fengate Capital Management Ltd. regarding Zoning By-law No. 6593 of the former Corporation of the City of Hamilton is allowed in part and By-law No. 6593 is amended in accordance with Attachment 2 to this decision.

PL130601
PL131311
PL131089
PL130630
PL130909

4. The Procedural Order to govern cases PL130630, PL130909 and PL131311 is amended in accordance with paragraphs 25 through 30, above, and in accordance with Attachment 3 to this decision.

"Susan de Avellar Schiller"

SUSAN de AVELLAR SCHILLER
VICE CHAIR

Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario

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ATTACHMENT 1

PL130601 et al

Draft Amending By-law for
1400-1428 Upper James Street, Hamilton
(By-law 05-200)
(Page 3 of 9)

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

Bill No. [REDACTED]

CITY OF HAMILTON

BY-LAW NO. _____

**To Amend Zoning By-law No. 05-200, as Amended,
Respecting Lands Located at 1400-1428 Upper James 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 25th day of May, 2005;

AND WHEREAS the Council of the City of Hamilton, in adopting Item _____ of Report 10-_____ of the Planning Committee, at its meeting held on the _____ day of _____, 2010, recommended that Zoning By-law 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 the provisions of the Planning Act.

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

1. That Map No. 1342 and 1343 of Schedule "A" to Zoning By-law No. 05-200, is amended, by incorporating additional Conservation/Hazard Land (P5) Zone boundaries, for the

Draft Amending By-law for
1400-1428 Upper James Street, Hamilton
(By-law 05-200)
(Page 4 of 9)

applicable lands, the lands, the extent and boundaries of which are shown on Schedule "A" as "Block 1" annexed hereto and forming part of this By-law.

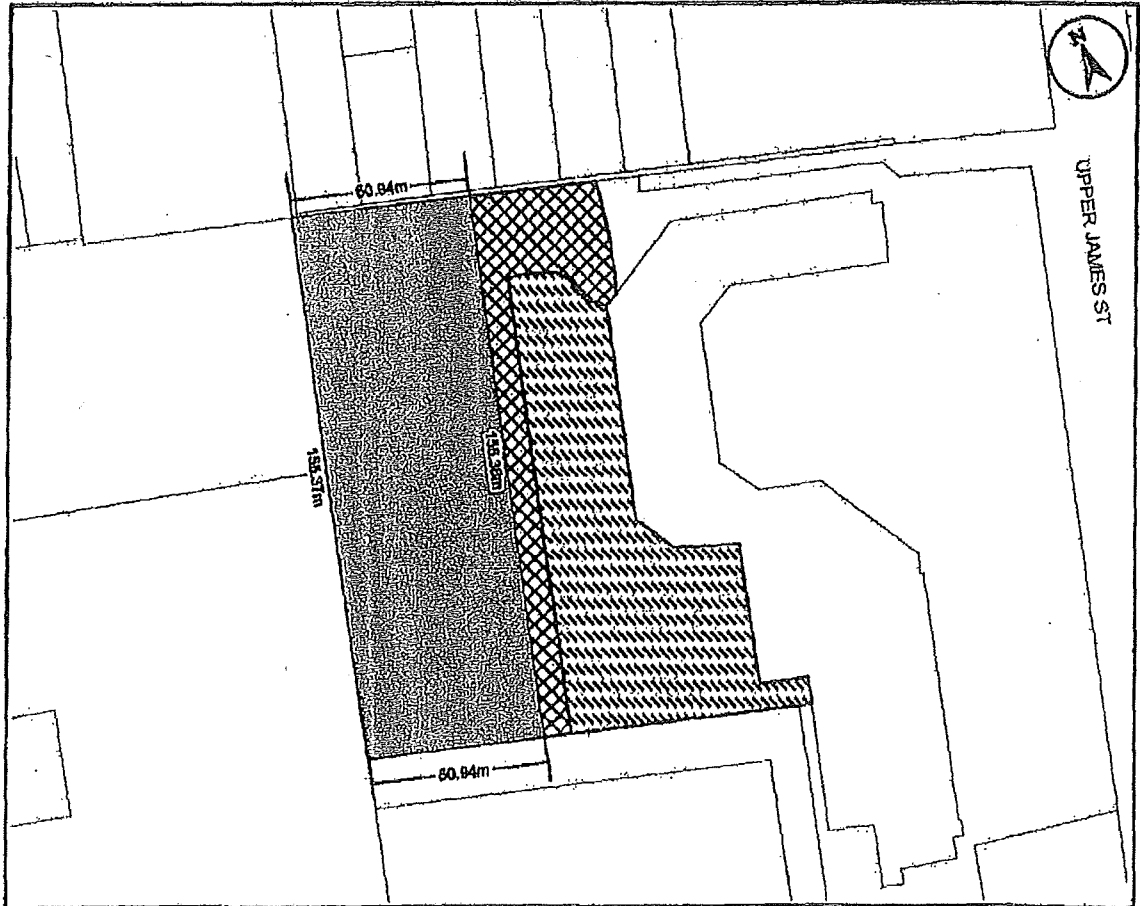
- 2. That the Clerk is hereby authorized and directed to proceed with the giving of notice of the passing of this By-law, in accordance with the Planning Act.
- 3. That this By-law No. _____ shall come into force and be deemed to have come into force in accordance with Subsection 34(21) of the Planning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

PASSED and ENACTED this _____ day of _____, 2014.

Bob Bratina
Mayor

Rose Caterini
Clerk

ZAC-12-029



This is Schedule "A" to By-law No. 14-

Passed the day of 2014

 Mayor

 Clerk


Schedule "A"


Map Forming Part of
 By-law No. 14-_____

to Amend By-law No. 05-200
 Map 1342 & 1343

Subject Property

1400-1428 Upper James Street

 **Block 1** - Lands to be Zoned
 Conservation / Hazard Land (P5) Zone

 **Block 2** - Refer to By-law No. 6593

 **Block 3** - Refer to By-law No. 6593

Scale:
 N.T.S.

File Name/Number:
 ZAC-12-029 / OPA-12-012

Date:
 March 4, 2014

Planner/Technician:
 CT/AL



Hamilton

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

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

Bill No.

CITY OF HAMILTON

BY-LAW NO.

To Amend Zoning By-law No. 6593

Respecting Lands Located at 1400-1428 Upper James Street (Hamilton)

WHEREAS the City of Hamilton Act, 1999, Statutes of Ontario, 1999 Chap. 14, Sch. C. did incorporate, as of January 1, 2001, the municipality "City of Hamilton";

AND WHEREAS the City of Hamilton is the successor to certain area municipalities, including the former municipality known as the "The Corporation of the City of Hamilton" and is the successor to the former regional municipality, namely, "The Regional Municipality of Hamilton-Wentworth";

AND WHEREAS the City of Hamilton Act, 1999, provides that the Zoning By-laws and Official Plans of the former area municipalities and the Official Plan of the former regional municipality continue in force in the City of Hamilton until subsequently amended or repealed by the Council of the City of Hamilton;

AND WHEREAS the Council of The Corporation of the City of Hamilton passed Zoning By-law No. 6593 (Hamilton) on the 25th day of July 1950, which by-law was approved by the Ontario Municipal Board by Order dated the 7th day of December 1951, (File No. P.F.C. 3821);

AND WHEREAS the Council of the City of Hamilton, in adopting Item _____ of Report _____ of the Economic Development and Planning Committee at its

meeting held on the 9th day of August of 2010, recommended that Zoning By-law No. 6593 (Hamilton), be amended as hereinafter provided;

AND WHEREAS this by-law is in conformity with the Urban Hamilton Official Plan, approved by the Minister under the Planning Act on August 16, 2013.

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

1. That Sheet No. W9c of the District Maps, appended to and forming part of By-law No. 6593 (Hamilton), is amended by changing the zoning from the "C/S-1061" (Urban Protected Residential) District, Modified, and the "HH-1061" (Restricted Community Shopping and Commercial) District, Modified, "HH-1061a" (Restricted Community Shopping and Commercial) District, Modified and the "HH-1061b" (Restricted Community Shopping and Commercial) District, Modified to the "HH-1061c" (Restricted Community Shopping and Commercial) District, Modified on the lands, the extent and boundaries of which are shown on a plan hereto annexed as Schedule "A".
2. That the "HH" (Restricted Community Shopping and Commercial) District regulations, as contained in Section 9 of Zoning By-law No. 6593 be modified to include the following requirements:
 - (a) That notwithstanding Section 14(A) (Permitted Uses) of Zoning By-law 6593, the lands shown as "Blocks 1" and "2" shall only be used for the following:
 - (i) vehicle parking; and,
 - (ii) truck access.
 - (b) That notwithstanding Section 18A(7), minimum dimensions of 2.6 metres by 5.5 metres shall be provided for every parking space located in the rear yard.
 - (c) That notwithstanding Section 18A(12), a minimum 1.5m planting strip shall be provided and maintained along the southerly side property line abutting the expanded parking area; a minimum 1.8m planting strip shall be provided and maintained along the northerly side property line abutting the expanded parking area; and a minimum 1.0m wide planting strip shall be provided along the rear (westerly) property line abutting "Block 3" (future storm water management pond).
 - (d) That notwithstanding Section 18A(12)(c), a 1.8 m high visual barrier shall be provided and maintained along the southerly and westerly property

lines within the expanded parking area and a 1.8 m high chain-link fence shall be provided and maintained along the westerly property line abutting "Block 3" (future storm water management pond).

- (e) That notwithstanding Section 2.(2)H.(via) of Zoning By-law No. 6593, a "planting strip" along the westerly boundary may include lighting fixtures and a "planting strip" along the southerly boundary may include a retaining wall.
- (f) That notwithstanding Section 2.(2)J.(xb) of Zoning By-law No. 6593, a "landscaped area" may include lighting fixtures and/or retaining walls.

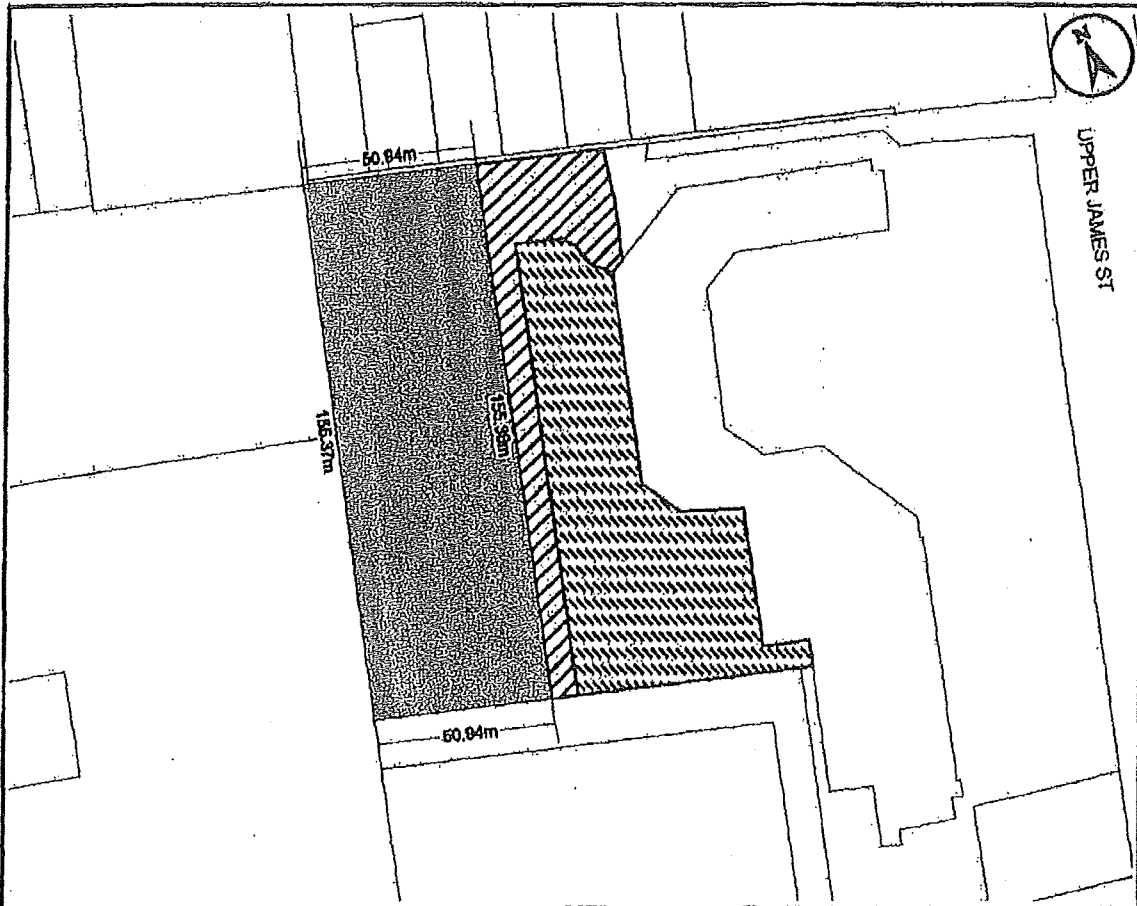
- 3. That no building or structure shall be erected, altered, extended or enlarged, nor shall any building or structure or part thereof be used, nor shall any land be used, except in accordance with the "HH" (Restricted Community Shopping and Commercial) District, Modified District provisions, subject to the special requirements referred to in Section 2 of this by-law.
- 4. That the "C/S-1061" (Urban Protected Residential) District, pertaining to the said lands be removed from Schedule W-9c of Zoning By-law No. 6593.
- 5. Sheet No. W9A of the District Maps is amended by marking the lands referred to in Section 1 of this by-law as S-1061c.
- 6. That Zoning By-law No. 6593 (Hamilton) is amended by adding this By-law to Section 14A as Schedule S-1061c.
- 7. 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.

PASSED and ENACTED this _____ day of _____, 2014.

R. Bratina
Mayor

R. Caterini
Clerk

ZAC-12-029



This is Schedule "A" to By-law No. 14-
Passed the day of, 2014




Mayor


Clerk

Schedule "A"

Map Forming Part of
By-law No. 14-_____

to Amend By-law No. 6593

- Subject Property**
1400 -1428 Upper James Street
-  **Block 1** - Lands to be Zoned from "O" (Urban Protected Residential) District and "C/S-1061" (Urban Protected Residential) District, Modified to the "HH/S-1061c" (Restricted Community Shopping and Commercial) District, Modified
 -  **Block 2** - Lands to be Zoned from "HH-1061", "HH-1061a" and "HH-1061b" (Urban Protected Residential) District, Modified to the "HH-1061c" (Restricted Community Shopping and Commercial) District, Modified
 -  **Block 3** - Refer to By-law No. 05-200

Scale: N.T.S.	File Name/Number: ZAC-12-029 / OPA-12-012	
Date: April 24, 2014	Planner/Technician: CT/AL	
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT		