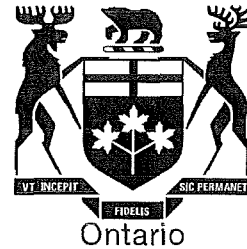


Ontario Municipal Board
Commission des affaires municipales
de l'Ontario

15-035 – Attachment 1 15-036 – Attachment 2



ISSUE DATE: December 2, 2014

CASE NO(S): 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)

OMB Case No. PL130909

OMB File No. PL130910

Heard: August 14 and 18, 2014 in Hamilton, Ontario

APPEARANCES:

Parties

Counsel

DiCenzo Construction Company
Limited

S. Zakem

1804487 Ontario Inc.

N. Smith

A. De Santis Developments Ltd.

P. Tice

1804482 Ontario Ltd.

D. Baker

City of Hamilton

M. Minkowski

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

[1] Five cases have been grouped to be heard together but are not consolidated. Those cases are PL130601, PL131089, PL130630, PL130909 and PL131311.

[2] Cases PL130601 and PL131089 were heard and disposed of in a teleconference appearance in July, 2014. Cases PL130630, PL130909 and PL131311 were heard by the Board on August 14 and August 18, 2014. Separate decisions will issue for each of these three remaining cases.

[3] This decision deals only with case PL130909. DiCenzo Construction Company Limited ("DCCL") is the applicant and appellant in case PL130909.

[4] There are five interests with land holdings that are clustered together in the Mewburn neighbourhood of the City of Hamilton ("City"). These several holdings are located between West 5th Street on the west and Upper James Street on the east. Stone Church Road is to the north and Rymal Road West is to south, although none of the properties front on either Stone Church Road or Rymal Road West.

[5] These interests are DCCL, 1804482 Ontario Ltd. ("Sonoma"), A. De Santis Developments Ltd. ("De Santis"), 1804487 Ontario Inc. ("1804487") and Robert Morris, a participant in these proceedings.

[6] Sonoma, DCCL and 1804487 Ontario Inc. all wish to develop their lands and have applications before this Board in support of those intentions.

[7] Neither De Santis nor Mr. Morris has a development proposal before the Board.

[8] The Board was advised that the City, Sonoma, DCCL and 1804487 had reached a settlement, as set out in the Minutes of Settlement ("MOS") filed as Exhibit 3 in these proceedings.

[9] De Santis is not a signatory to the MOS.

[10] Counsel for De Santis advised the Board that De Santis does not accept the MOS but De Santis is not calling a case in any of the matters before the Board. De Santis then withdrew and took no further role in these proceedings.

[11] The Board heard from Stephen Fraser, a full Member of the Canadian Institute of Planners and a Registered Professional Planner in Ontario whom the Board qualified to provide independent expert opinion evidence in land use planning matters.

[12] DCCL wishes to develop its lands for residential uses, particularly for block townhouses.

[13] The Board has before it zoning by-law amendments, a draft plan of subdivision and an associated list of special conditions for draft plan approval to implement the proposed development.

[14] The subject lands are governed by two zoning by-laws.

[15] 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.

[16] An amendment to the new Urban Hamilton Official Plan ("UHOP") is also needed. The evidence before the Board is that the proposed zoning by-law amendments would conform to the UHOP, as modified by the amendment sought by DCCL.

[17] No amendment to the UHOP was before the Board in this proceeding. The Board was advised that DCCL had applied for such an amendment and that the amendment had been adopted by the City. The appeal period had not yet closed by the time of this

appearance. As such, the Board reserved its decision pending being advised by the City whether or not any appeals were filed of this UHOP amendment.

[18] The appeal period expired several weeks after the close of the hearing of the merits. The Board has since been advised by Counsel for the City that no appeals were filed and the amendment to the UHOP is now in force.

[19] Storm water management is an issue in this neighbourhood. The issue has been resolved by agreement between Sonoma, DCCL and 1804487 that will enable the use of an interim storm water management facility to be replaced eventually by a larger permanent facility.

[20] The Board finds that addressing the storm water management issue in this way is appropriate and supports the orderly development in the Mewburn neighbourhood.

[21] 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.

[22] The subject lands are within a settlement area and the proposed development enhances the efficient use of the lands.

[23] Section 51(24) of the *Planning Act*, R.S.O. 1990, c. P.13 ("Act") sets out the criteria to which the Board must have regard when considering a proposed plan of subdivision.

[24] The draft plan of subdivision is set out in Schedule K of the MOS. The special conditions of draft plan approval are set out in Schedule L of the MOS.

[25] On the evidence of Planner Fraser, the Board finds that the draft plan of subdivision, subject to conditions, meets the applicable criteria set out in s. 51(24) of the Act.

[26] The Board further finds that the draft plan of subdivision, subject to conditions, and the proposed zoning by-law amendments have had appropriate regard for the matters of provincial interest as set out in s. 2 of the Act, are consistent with the PPS and conform to the GGH.

[27] Having regard to s.2.1 of the Act, the Board notes that this matter comes to the Board with the support of the City.

[28] DCCL asks the Board to amend By-law No. 05-200 in accordance with Attachment 1 to this decision, to amend By-law No. 6593 in accordance with Attachment 2 to this decision, to approve the draft plan of subdivision in accordance with Attachment 3 to this decision, subject to the conditions of draft plan approval set out in Attachment 4 to this decision.

[29] The Board further notes that, in accordance with clause 38 of the MOS, Counsel for Sonoma and Counsel for 1804487 advised the Board that their respective clients support this request.

ORDER

[30] The Board orders that the appeals by DiCenzo Construction Company Limited are allowed in part and that:

1. By-law No. 05-200 is amended in accordance with Attachment 1 to this decision.
2. By-law No. 6593 is amended in accordance with Attachment 2 to this decision.
3. The draft plan of subdivision in Attachment 3 to this decision is approved, subject to the conditions of draft plan approval as set out in Attachment 4 to this decision.

4. In accordance with s. 51(56.1) of the *Planning Act*, R.S.O. 1990 c. P. 13, final approval of the plan of subdivision is given to the City of Hamilton for the purposes of s. 51(58).

"Susan de Avellar Schiller"

SUSAN de AVELLAR SCHILLER
VICE-CHAIR

Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario

Website: www.elfo.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ATTACHMENT 1

Draft Amending By-law for
1125 West 5th Street, Hamilton
(By-law 05-200)

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

Bill No.

CITY OF HAMILTON

BY-LAW NO. _____

**To Amend Zoning By-law No. 05-200 as Amended,
Respecting the Lands Located at 1125 West 5th 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 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

Draft Amending By-law for
1125 West 5th Street, Hamilton
(By-law 05-200)

the, 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 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.

PASSED and ENACTED this ____ day of _____, 2014.

Bob Bratina
Mayor

Rose Caterini
Clerk

ZAC-12-067

Draft Amending By-law for
1125 West 5th Street, Hamilton
(By-law 05-200)



This is Schedule "A" to By-Law No. 14- Passed the day of, 2014	_____ Mayor _____ Clerk
---	--------------------------------------

<h2>Schedule "A"</h2> <p>Map Forming Part of By-Law No. 14-_____</p> <p>to Amend By-law No. 05-200</p>	<p>Subject Property 1125 West 5th Street</p> <ul style="list-style-type: none"> Block 1 - Refer to By-law 6593 Block 2 - Refer to By-law 6593 Block 3 - Refer to By-law 6593 Block 4 - Lands to be Zoned conservation/Hazard Lands (P5) Zone
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Scale: N.T.S.	File Name/Number: ZAC-12-057 & 2ST-201205	
Date: August 12, 2014	Planner/Technician: EJVS	
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT		

ATTACHMENT 2

Draft Amending By-law for
1125 West 5th Street, Hamilton
(By-law No. 6593)

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

Bill No.

CITY OF HAMILTON

BY-LAW NO.

**To Amend Zoning By-law No. 6593 (Hamilton) as Amended
Respecting the Lands Located at 1125 West 5th Street (Hamilton)**

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

AND WHEREAS the City of Hamilton is the successor to certain area municipalities, including the former area municipality known as "The Corporation of the City of Hamilton" and is the successor of 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 Zoning By-law No. 6593 (Hamilton) was enacted on the 25th day of July 1950, which was approved by the Ontario Municipal Board by Order dated the 7th day of December 1951 (File No. P.F.C. 3821);

AND WHEREAS this by-law will be in conformity with the Official Plan of the City of Hamilton (the Official Plan of the former City of Hamilton) in accordance with the provisions of the Planning Act.

AND WHEREAS this By-law will be in conformity with the Urban Hamilton Official Plan upon approval of Official Plan Amendment No. [REDACTED].

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

1. The Sheet No. W9d of the District Maps, appended to and forming part of By-law No. 6593 (Hamilton), as amended, is further amended:
 - a) by changing the zoning from the "AA" District to the "RT-10" (Townhouse) District, Modified, the lands comprised of **Block 1**.
 - b) by changing the zoning from the "AA" District to the "RT-30" (Street - Townhouse) District, Modified, the lands comprised of **Block 2**.
 - c) by changing the zoning from the "AA" District to the "R-4" (Small Lot Single Family Dwelling) District, Modified, the lands comprised of **Block 3**.

on the lands the extent and boundaries of which are shown on a plan hereto annexed as Schedule "A".

2. That the "RT-10" (Townhouse) District regulations, as contained in Section 10D. of Zoning By-law No. 6593 applicable to Block 1 of the By-law, are modified to include the following special requirements:
 - (a) That in addition to Section 10D (2), a Storm Water Management Facility shall be considered as a permitted use.
 - (b) That notwithstanding Section 10D (4) (a) & (b) of By-law No. 6593 to the contrary, a yard abutting a street shall be 2.0 metres and a yard abutting any other lot shall be 1.2m. However, no minimum yard shall be provided for an interior townhouse unit. A minimum front yard of 5.8 metres and a minimum rear yard of 6.0 metres shall be provided for every lot or unit.
 - (c) That notwithstanding Section 10D (5) (a), (b) & (c) of By-law No. 6593 to the contrary, the distance between two exterior end walls containing no windows or windows shall be not less than 2.4 metres. The distance between two exterior rear walls containing windows shall be not less than 12.5 metres.
 - (d) That notwithstanding Section 10D (6) of By-law No. 6593 to the contrary, every lot or unit shall have a depth of not less than 25.0 metres.
 - (e) That notwithstanding Section 10D (7) (a) & (b) of By-law No. 6593 to the contrary, every lot or unit shall have an area of not less than 150.0 square metres and a width of not less than 6.0 metres.

Draft Amending By-law for
1125 West 5th Street, Hamilton
(By-law No. 6593)

- (f) That notwithstanding Section 10D (8) & (9) of By-law No. 6593 to the contrary, only block townhouses within a standard condominium corporation shall have a privacy area and associated screening as set out in the "RT-10" District Modified Zone.
- (g) That notwithstanding Section 10D (10) & (11) and Section 18 of By-law No. 6593 to the contrary, not less than 30% of each unit shall be landscaped. A minimum landscaped strip of 3.0 metres in depth shall be provided abutting West 5th Street except for access driveways and sidewalks.
- (h) That notwithstanding Section 18A By-law No. 6593 to the contrary, each unit shall provide two (2) parking spaces one of which can be provided within an attached garage.
- (i) That notwithstanding Section 18A By-law No. 6593 to the contrary, 0.5 visitor parking spaces per unit shall be provided and shall be a minimum width of 2.6 metres and a minimum length of 5.5 metres.
- (j) That notwithstanding Section 18A By-law No. 6593 to the contrary, parallel parking spaces shall have a minimum width of 2.6 metres and a minimum length of 6.5 metres and perpendicular parking spaces, including parking spaces in a driveway contiguous to an individual dwelling unit, shall have a minimum width of 2.6 metres and a minimum length of 5.8 metres, except within an attached garage.
- (k) That notwithstanding Section 2. (2) C. (iv) By-law No. 6593 to the contrary, a private condominium road shall be considered a "street" for the purposes of applying the "RT-10" zoning regulations, as amended, for the subject lands.
- (l) That notwithstanding anything to the contrary within By-law No. 6593, the following additional encroachments shall be permitted:
 - An unenclosed porch and stairs for same may project 2.5 metres into the minimum front yard and 2.0 metres into the minimum side yard abutting a street.
 - An alcove, bay window, cantilever, either with or without foundations, may project into any required front, rear or side yard (end unit and/or corner unit) a distance of not more than 0.6m.
- (m) That Sub-Sections 18A.(9),(11) and (12) of Zoning By-law 6593 not apply for visitor parking, except that a visual barrier between a parking space and the lot line of an abutting residential district, not less than 1.2m in height and not greater than 2.0m in height, and a landscape strip not less than 1.5m, shall be provided and maintained.

- (n) That Sub-Sections 18A (25) and 18A (29) of By-law 6593 not apply.
3. That the "RT-30" (Street - Townhouse) District regulations, as contained in Section 10F. of Zoning By-law No. 6593 applicable to Block 2 of the By-law, are modified to include the following special requirements:
- (a) That notwithstanding Section 10F (4) (b) of By-law No. 6593 to the contrary, a rear yard depth of not less than 6.5 metres shall be provided.
 - (b) That notwithstanding Section 10F (4) (c) (i) to (iii) inclusive of By-law No. 6593 to the contrary, a side yard abutting a wall that is not a party wall, along each side lot line, including a side lot line adjacent to a street, of a width of not less than 1.2 metres shall be provided and maintained.
 - (c) That notwithstanding Section 10F (5) (a) to (c) inclusive of By-law No. 6593 to the contrary, a distance between buildings of not less than 2.4 metres shall be provided and maintained.
 - (d) That notwithstanding Section 10F (6) (i) & (ii) of By-law No. 6593 to the contrary, every lot or unit shall have an area of not less than 150.0 square metres and a width of not less than 6.0 metres.
 - (e) That notwithstanding Section 10F (7) and 18A By-law No. 6593 to the contrary, each unit shall provide two (2) parking spaces one of which can be provided within an attached garage. Each parking space shall be a minimum width of 3.0 metres and a minimum depth of 6.0 metres.
 - (f) That notwithstanding Section 10F (9) By-law No. 6593 to the contrary, not more than nine single family dwelling units shall be attached in a continuous row.
 - (g) That notwithstanding anything to the contrary within By-law No. 6593, a minimum depth of 2.0 metres to the hypotenuse of a daylight triangle shall be provided.
 - (h) That notwithstanding Section 2. (2) C. (iv) By-law No. 6593 to the contrary, a private condominium road shall be considered a "street".
 - (i) That notwithstanding anything to the contrary within By-law No. 6593, access to lands zoned "RT-10" (Townhouse) District shall be permitted across the lands zoned "RT-30" (Street Townhouse) District.
 - (j) That notwithstanding anything to the contrary within By-law No. 6593, the following additional encroachments shall be permitted:

Draft Amending By-law for
1125 West 5th Street, Hamilton
(By-law No. 6593)

- An unenclosed porch and stairs for same may project 2.5 metres into the minimum front yard and 2.0 metres into the minimum side yard abutting a street including to the hypotenuse of a daylight triangle.
 - An alcove, bay window, cantilever, either with or without foundations, may project into any required front, rear or side yard (end unit and/or corner unit) a distance of not more than 0.6m.
4. That the "R-4" (Small Lot Single Family Dwelling) District regulations, as contained in Section 9A. of Zoning By-law No. 6593 applicable to Block 3 of the By-law, are modified to include the following special requirements:
- (a) That notwithstanding Section 9A. (2) (b) 1. (ii) A. of By-law No. 6593 to the contrary, in the case of an interior lot, having a width not less than 1.2 metres and 0.6 metres on the non-garage side of the lot shall be provided.
 - (b) That notwithstanding Section 9A. (2) (c) 1. of By-law No. 6593 to the contrary, every lot or tract of land within the "R-4" District for a single family dwelling shall have an average lot width of not less than 10.0 metres and an average lot area of not less than 290.0 square metres.
 - (c) That notwithstanding Section 9A. (2) (d) 1. of By-law No. 6593 to the contrary, no single family dwelling, except that in an "R-4" District, shall be situate less than 1.2 metres from a single family dwelling on an abutting lot or tract of land, measured between exterior walls of the building.
 - (d) That notwithstanding Section 18(14) of By-law No. 6593 to the contrary, not less than 30% of the gross area of the front yard for each unit shall be used for landscaping excluding concrete, asphalt, gravel, pavers and/or other similar materials.
5. That Zoning By-law No. 6593 is amended by adding this By-law to Section 19B as Schedule S-1703.
6. That the Clerk is hereby authorized and directed to proceed with the giving of notice of passing of this By-law, in accordance with the Planning Act.

PASSED and ENACTED this day of , 2014.

R. BRATINA
MAYOR

R. CATERINI
CLERK

Draft Amending By-law for
 1125 West 5th Street, Hamilton
 (By-law No. 6593)



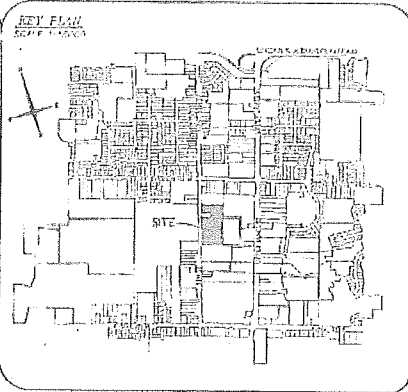
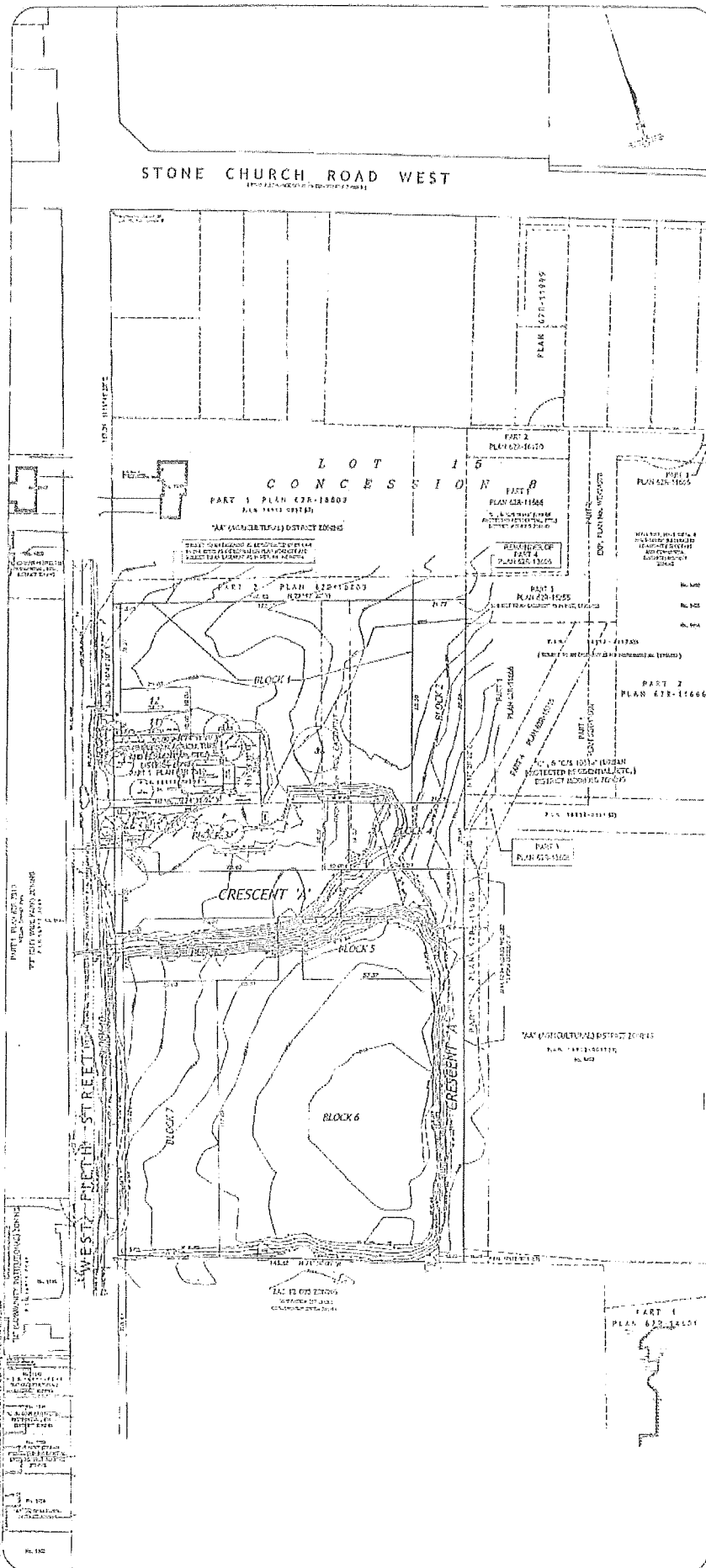
This is Schedule "A" to By-Law No. 14-
 Passed the day of, 2014

 Mayor

 Clerk

<h2>Schedule "A"</h2> <p>Map Forming Part of By-Law No. 14-_____</p> <p>to Amend By-law No. 6593</p>		<p>Subject Property 1125 West 5th Street</p> <ul style="list-style-type: none"> Block 1 - Rezoned from the Agricultural "AA" District to the Townhouse "RT-10" District, Modified. Block 2 - Rezoned from the Agricultural "AA" District to the Street-Townhouse "RT-30" District, Modified. Block 3 - Rezoned from the Agricultural "AA" District to the Small Lot Single Family Dwelling "R-4" District, Modified. Block 4 - Refer to By-Law No. 05-200
<p>Scale: N.T.S.</p>	<p>File Name/Number: ZAC-12-067 & 25T-201206</p>	 Hamilton
<p>Date: August 12, 2014</p>	<p>Planner/Technician: EJVS</p>	
<p>PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT</p>		

ATTACHMENT 3



REVISED
 DRAFT PLAN OF
1125
WEST FIFTH
 FORM A PROPOSED SUBDIVISION OF
 PART OF LOT 15-CONCESSION B
 GEOGRAPHIC TOWNSHIP OF BARTON
 CITY OF HAMILTON

SCALE 1:750

- NOTE:** THIS IS A DRAFT PLAN ONLY AND IS SUBJECT TO CHANGE AND AMENDMENT.
- NOTES:** DISTANCES SHOWN ON THIS PLAN ARE IN METRES AND CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048
- RE: CHAPTER E.13 R.S.O. 1990 SECTION 61 OF THE PLANNING ACT**
- | | |
|------------------|---|
| A. SHOWN ON PLAN | H. MUNICIPAL PAVED DRIVE AVAILABLE |
| B. SHOWN ON PLAN | I. CLAY LOAM |
| C. SHOWN ON PLAN | J. SHOWN ON PLAN |
| D. SHOWN ON PLAN | K. MUNICIPAL SIGNALS TO BE INSTALLED BY SUBDIVISION |
| E. SHOWN ON PLAN | L. SHOWN ON PLAN |
| F. SHOWN ON PLAN | |
| G. SHOWN ON PLAN | |

SUBDIVISION CERTIFICATE

I, **J. J. CLARKE**, being the person named in the plan as the person to be subdivided, do hereby certify that the dimensions of the lands to be subdivided as shown on this plan and their relationship to adjacent lands are accurately and correctly shown.

JUNE 25, 2014
 J. J. CLARKE
 OFFICIAL LAND SURVEYOR

LAND USE SCHEDULE

AREA 0 - SUBDIVISION = 3024 m² / 3.02 HA
 BLOCKS 1 & 2 - J-B - 16680000 (2.00 CLUM) (2019.12)
 BLOCK 2 - SHOP (1970M)
 BLOCKS 3 AND 4 - 3.05M PLAZA (2019M)
 LOTS 11 & 12 - SINGLE FAMILY DWELLING (2019M)

AREA OF STREETS	4403 m ²
AREA OF STREET RESERVES	761 m ²
LOT 11 AREA	293 m ²
LOT 12 AREA	293 m ²
BLOCK 1 AREA	2352 m ² (4.92 ACRES)
BLOCK 2 AREA	1070 m ²
BLOCK 3 AREA	2393 m ² (4.92 ACRES)
BLOCK 4 AREA	1350 m ² (2.92 ACRES)
BLOCK 5 AREA	1670 m ² (2.5 ACRES)
BLOCK 6 AREA	1150 m ² (2.48 ACRES)
BLOCK 7 AREA	1626 m ² (2.48 ACRES)
BLOCK 8 AREA	1670 m ² (2.5 ACRES)

PLANNED 41.77 ACRES PER METRE SQUARE
 UNDEVELOPED 2150 ACRES
 TOTAL 4150

SUBDIVISION DRAFT APPROVAL:

APPROVED UNDER SECTION 51 OF THE PLANNING ACT, P.S. 1990, AS AMENDED BY THE SEVERAL AMENDMENTS OF PLANNING AND ZONING DEVELOPMENT DEPARTMENT OF THE CITY OF HAMILTON UNDER THE AUTHORITY OF BY-LAW 07-323

THIS PLAN IS APPROVED BY THE CITY OF HAMILTON ON JUNE 25, 2014.

CITY MANAGER, PLANNING AND ECONOMIC DEVELOPMENT
 CITY OF HAMILTON

A. J. Clarke and Associates Ltd.
 SURVEYORS • PLANNERS • ENGINEERS

25 MAIN STREET WEST, SUITE 303
 HAMILTON, ONTARIO L8P 1M1
 TEL: 905.528.3721 FAX: 905.528.3209
 WWW.AJCLARKE.COM

ATTACHMENT 4

Special Conditions of Draft Plan of Subdivision Approval for 25T-201206

1. That this approval apply to the Revised Plan of Subdivision 25T-201206, for DiCenzo Construction Company Limited, in the City of Hamilton, prepared by A. J. Clarke and Associates Ltd., and certified by S. Dan McLaren, OLS., dated June 25, 2014, showing 7 blocks for townhouses (Blocks 1, 3, 4, 5, 6, 7 and 8); 2 lots for single-family dwellings (Lots 11 and 12); 1 block for a stormwater management facility (Block 2); 2 blocks for road widenings along West 5th Street (Blocks 9 and 10) and a public road (Crescent 'A').
2. That the Owner shall enter into a Standard Form Subdivision Agreement with the City of Hamilton.
3. That, **prior to registration of a Subdivision Agreement by the City**, the Owner/Applicant shall investigate the noise levels on the site and determine and implement the noise control measures that are satisfactory to the City of Hamilton in meeting the Ministry of the Environment's recommended sound level limits. An Acoustical Report, prepared by a qualified Professional Engineer containing the recommended control measures, shall be submitted, to the satisfaction of the City of Hamilton, Director of Planning. Should a peer review of the Acoustical Report be warranted, all associated costs shall be borne by the Owner/Applicant and shall be submitted to the satisfaction of the City of Hamilton, Director of Planning.
4. That, **prior to preliminary grading**, the Owner shall submit a Tree Preservation Study and Plan, prepared by a certified arborist or landscape architect, for review and approval by the Director of Planning, and provide written certification from the Owner's landscape architect/arborist to the Director of Planning that all measures for the protection of isolated trees, tree clusters, and woodlands, in accordance with the Detailed Tree Preservation Plan approved by the Director of Planning, have been implemented and inspected, prior to any clearing or grubbing of the lands within the draft plan.
5. That **prior to registration of the final Plan of Subdivision**, the Owner agree in writing to submit and have approved a design brief detailing the elevational treatment of all units flanking West 5th Street to the satisfaction of the Director of Planning.
6. That **prior to registration of the final Plan of Subdivision**, the Owner agree in writing to provide an enhanced landscape plan at the site plan approval stage illustrating the buffering of parking areas on Block 7 and the inclusion of benches and additional landscaping adjacent to the visitor parking area within Block 1 east of Lots 11 and 12, to the satisfaction of the Director of Planning.
7. That, **prior to registration of the final Plan of Subdivision**, the Owner shall submit the necessary transfer deeds to convey sufficient lands (Block 2) to the City of Hamilton for the purposes of a Stormwater Management (SWM) Facility, to the satisfaction of the Senior Director of Growth Management

8. That, **prior to registration of the final Plan of Subdivision**, the owner shall include a certificate on the final plan dedicating its portion of Crescent 'A' to the City of Hamilton as a public highway.
9. That, **prior to registration of the final Plan of Subdivision**, Blocks 9 and 10 shall be dedicated to the City of Hamilton as a public highway by the owner's certificate on the Final Plan of Subdivision for the widening of West 5th Street.
10. That, **prior to registration of the final Plan of Subdivision**, the Owner shall pay their proportional share for future urbanization of West 5th Street adjacent to Blocks 9 and 10, based on the City's "New Roads Servicing Rate" in effect at the time of the plan registration.
11. That, **prior to registration of the final Plan of Subdivision**, the Owner provides a cash payment to the City in the amount of \$6,000 (subject to annual adjustments in accordance with City of Hamilton By-law 07-281) for the outstanding servicing cost for the existing municipal services adjacent to the subject lands.
12. That, **prior to registration of the final Plan of Subdivision**, the Owner shall agree that no more than 100 units shall be constructed that outlet solely on the internal Crescent 'A' until a second municipal street access is provided to service the subject lands, to the satisfaction of the Senior Director of Growth Management Division.
13. That, **prior to registration of the final Plan of Subdivision**, the Owner shall agree that any proposed phasing of the subject lands shall be to the satisfaction of the Senior Director of Growth Management.
14. That, **prior to registration of the final Plan of Subdivision**, the Owner agrees that Block 7, Lot 11, and Lot 12 are undevelopable until sanitary and storm sewers and water services are provided to the satisfaction of the Senior Director of Growth Management.
15. That, **prior to registration of the final Plan of Subdivision**, the Owner shall agree that no access to Blocks 3 and 8 will be permitted from West 5th Street. Reserves (0.3m) shall be included on the plan to restrict access.
16. That, **prior to registration of the final Plan of Subdivision**, the Owner agrees to include in the purchase and sale agreements for Lot 11 and Lot 12 a warning clause to advise the prospective purchasers of a lack of on-street parking on West 5th Street and the installation of a municipal sidewalk. Furthermore, the Owner agrees to install a double width driveway approach to provide additional parking for the subject lots at his cost and to the satisfaction of the Senior Director of Growth Management.

17. That, **prior to servicing**, if West 5th Street has not been constructed to a full urban cross-section, the Owner agrees to implement all necessary works to provide for a major overland flow route from the intersection of Crescent 'A' and West 5th Street to the future centralized SWM Facility, which may include, but is not limited to, adjustment of the vertical alignment of West 5th Street, storm sewer and curb installation, etc., at his cost (less oversizing), to the satisfaction of the Senior Director of Growth Management.
18. That, **prior to servicing**, the Owner shall include in the engineering design and cost estimate schedules, provision to install a 1.5m wide concrete sidewalk on both sides of Crescent 'A' and along the east side of West 5th Street adjacent to the subject lands.
19. That, **prior to servicing**, the Owner shall include in the engineering design and cost estimate schedules, provision to install any required interim works, including but not limited to, sidewalks and lighting, pavement widening to provide for a left-turn lane and pavement markings on West 5th Street, to the satisfaction of the Senior Director of Growth Management Division.
20. That, **prior to servicing**, the Owner shall submit a final Stormwater Management (SWM) Report or Addendum, prepared by a qualified engineer, that demonstrates how quality and quantity control criteria will be handled, in accordance with City of Hamilton's Storm Drainage Policy, Criteria and Guidelines for Stormwater Infrastructure Design, and both the "West Central Mountain Drainage Assessment" and the Sheldon Mewburn Neighbourhoods Master Servicing Class EA, to the satisfaction of the Senior Director of Growth Management Division in consultation with the Hamilton Conservation Authority.
21. That, **prior to servicing**, if the Mewburn Neighbourhood centralized SWM Facility is not already constructed, and
 - a) all lands required for the centralized SWM Facility have been acquired by the City, the Owner shall include in the engineering design and cost estimate schedules provision to install the Mewburn Neighbourhood centralized SWM Facility in accordance with the "West Central Mountain Drainage Assessment" and the Sheldon Mewburn Neighbourhoods Master Servicing Class EA, and relocate a portion of the existing sanitary sewer to the satisfaction of the Senior Director of Growth Management, or
 - b) all lands required for the centralized SWM Facility have not been acquired by the City, the Owner may construct, operate and maintain, in an acceptable manner, a private temporary SWM facility on its lands, in accordance with requirements of an MOE Environmental Compliance Approval, until a time established by the Senior Director of Growth Management Division, and monitor the operation of the facility and provide the City with a copy of a satisfactory Operation and Maintenance Manual, to the satisfaction of the Senior Director of Growth Management Division.

22. That, in the event the Owner proceeds with the construction of the Mewburn Neighbourhood centralized SWM Facility, the Owner agrees, to the satisfaction of the Senior Director Growth Management, to:
- a. operate and maintain, in an acceptable manner, the stormwater management facility(s) throughout the construction and all stages of development until a time as established by the Senior Director of Growth Management and monitor such operation and effects thereof;
 - b. assume full responsibility for the cost to construct, operate and maintain the facility including any changes of the conditions of the MOE Approval until such time the stormwater management facility is assumed by the City;
 - c. remove sediment from the storm water management facility, carry out a bathymetric survey and verify volumetric capacity of the storm water management facilities, prior to release of the Owner's operation and maintenance responsibilities for the storm water management facilities;
 - d. provide an operation and maintenance manual to the City's satisfaction for the facility and agree to inspect/monitor and maintain the facility in accordance with said manual throughout construction and maintenance period until City assumption; and
 - e. keep detailed logs regarding the performance and maintenance activities for the facility, including costs for cleaning and removal of sediment, etc. to the City's satisfaction. This information is to be included in the operation and maintenance manual provided to the City by the Owner at the assumption of the facility.
23. That, **prior to servicing**, the Owner submits a detailed sump pump design to include secondary relief/overflow on the surface for use on all lots and blocks within the subdivision where a sump pump is required. The sump pump design shall consider the weeping tile inflow based on groundwater and severe wet weather conditions, to the satisfaction of the Senior Director of Growth Management.
24. That, **prior to servicing**, the Owner secures its share of the cost for any unconstructed portion of Crescent 'A' (north-south leg) and its proportionate share of the cost of any unconstructed local service connections on West 5th Street in accordance with the City's Financial Policies for Development, if they cannot be constructed in the first phase of development, to the satisfaction of the Senior Director Growth Management.
25. That, **prior to servicing**, the Owner include in the engineering design and cost estimate schedule provision to install a storm sewer on West 5th Street, from north to south limit of the subject lands, to the satisfaction of the Senior Director of Growth Management.

26. That, **prior to servicing**, the Owner shall prepare an on-street parking plan for Crescent 'A', based on the premise of achieving on-street parking for 40% of the total number of street townhouse dwellings for the subject lands, to the satisfaction of the Senior Director of Growth Management.
27. That **prior to servicing**, the Owner shall include in the engineering design and cost schedules to the satisfaction of the Senior Director of Growth Management:
 - a) driveway approaches and curb openings for all lots and blocks;
 - b) double-width driveway for Lot 11 and 12; and
 - c) the location of transit pads, community mailbox pads, and fire hydrants, where the location has been determined by the appropriate authorities.
28. That **prior to servicing**, the Owner shall include in the engineering design a plan demonstrating that all minor and major overland flow from the rear yards can be safely conveyed to roadways and/or the SWM Facility, to the satisfaction of the Senior Director of Growth Management
29. That, **prior to servicing**, if West 5th Street has not been constructed to a full urban cross-section, the Owner shall include in the engineering design and cost estimate schedule provision for a left-turn lane on West 5th Street along the frontage of the draft plan. The left-turn lane and appropriate tapers must be designed in accordance with TAC standards.
30. That, **prior to servicing**, if West 5th Street has not been constructed to a full urban cross-section, the Owner shall provide a detailed Pavement Marking and Traffic Signs Plan. The Plan must be in accordance with the City of Hamilton Traffic Signal and Pavement Marking Design Manual, and be submitted in micro-station V8, to the satisfaction of the Director of Engineering Services, Public Works Department.
31. That, **prior to registration of the final Plan of Subdivision**, the Owner shall include a certificate on the final plan dedicating a 9m x 9m daylight triangle on West 5th Street at the municipal road. The daylight triangle must be measured from the widened limits.
32. That, **prior to servicing**, the Owner include in the engineering design and cost estimate schedule provision to modify the vertical alignment of West 5th Street, to the north of intersection with Crescent 'A', to demonstrate that minimum sightlines of 110m are achieved to the satisfaction of the Director of Engineering Services, Public Works Department.

33. That, prior to registration of the final Plan of Subdivision, the Owner shall prepare and implement an erosion and sediment control plan for the subject property, to the satisfaction of the Hamilton Conservation Authority. The approved plan shall include the following notes:
- a) all erosion and sediment control measures shall be installed prior to development, and be maintained throughout the construction process, until all disturbed areas have been re-vegetated;
 - b) all erosion and sediment control measures shall be inspected after each rainfall, to the satisfaction of Authority staff;
 - c) any disturbed area not scheduled for further construction within 45 days shall be provided with a suitable temporary mulch and seed cover within 7 days of the completion of that particular phase of construction;. and
 - d) all disturbed areas shall be re-vegetated with permanent cover immediately following completion of construction.
34. That, prior to registration of the final Plan of Subdivision, the Owner shall prepare and implement a Lot Grading Plan to the satisfaction of the Hamilton Conservation Authority.

Notes:

1. The owner, the City, 1804482 Ontario Limited, and 1804487 Ontario Inc. have entered into Minutes of Settlement concerning various matters arising under these conditions including the dedication of lands required for the centralized SWM Facility and the timing and obligation to construct the centralized SWM Facility. Reference to such Minutes should be made in conjunction with the interpretation, application and clearance of these conditions.
2. The Owner's local share of the West 5th storm sewer will be based on a cost estimate approved by the City. It is not expected that the Owner's contribution be based on the new road servicing rate's nominal cost; and the Owner's share of the urbanization cost of West 5th shall be reduced by the storm component in the New Road Servicing Rate.
3. If the Owner undertakes the permanent construction of a component(s) of the urbanization of West 5th Street in advance of the full urbanization of West 5th Street, then the Owner's share of the urbanization cost of West 5th Street shall be correspondingly reduced in accordance with the City's Financial Policies for Development and the DC Background Study.

4. If the Owner undertakes the permanent construction of West 5th Street to a full urban cross-section, then the Owner shall receive payment from the City in accordance with the City's Financial Policies for Development and the DC Background Study.
5. If the Owner is unable to complete Crescent 'A' in its entirety then a temporary turnaround will be required to full municipal standards. The turnaround will require an adequate right-of-way that could be provided by way of a suitable block on the plan or on lands adjacent owned by others. Once the road is extended the City would deed back any lands not required for the roadway.
6. The land needs of the SWM Facility shall be as agreed-to in the Minutes of Settlement referred to in Note 1. In no event (including, without limitation, the re-design of the Mewburn Neighbourhood SWM Facility or the design of Sheldon Neighbourhood SWM Facility, any errors in such design, or changes to the City's policies in respect of same) shall the Owner be required to contribute additional land to the Mewburn Neighbourhood SWM Facility beyond Block 2.

The City further acknowledges and agrees that the Mewburn Neighbourhood SWM Facility may proceed in advance of the preliminary or final design or construction of the Sheldon Neighbourhood SWM Facility and that there are no impediments to the final design and construction of the Mewburn Neighbourhood SWM Facility as contemplated by the Minutes of Settlement referred to in Note 1.

7. The City will contribute to the cost of the Mewburn Neighbourhood SWM Facility, the oversizing of the storm sewer between West 5th Street and the SWM Facility, and the trunk storm sewer on Crescent 'A' in accordance with the City's Financial Policies for Development and the DC Background Study.
8. With respect to Condition 26, the City acknowledges that the Owner's concept plan (dated June 25, 2014) achieves on street parking for 40% of the total number of proposed street townhouse dwellings. Notwithstanding the Owner is still obligated to meet the requirement of the condition if plans for Block 1 change, the City acknowledges that the condition will not be interpreted strictly, having regard for the language of the condition: "*based on the premise of achieving on street parking for 40%*", given the proximity to transit and walkability of the neighbourhood.
9. Pursuant to Section 51(32) of the *Planning Act*, draft approval shall lapse if the plan is not given final approval within 3 years. One (1) 3-year extension will be granted on written request by the owner without amendment of these draft plan conditions provided that such written request is received prior to the initial lapse date of this draft approval. Further extensions will be considered if a written request is received before the draft approval subsequently lapses.