

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario

16-072
Attachment 1



ISSUE DATE: January 20, 2016

CASE NO(S): PL110331
PL090779
PL101381
PL120574
PL131287

PROCEEDING COMMENCED UNDER subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellants: See Schedule "1"
Subject: Official Plan Amendment No. 35 to the Region
of Hamilton-Wentworth Official Plan
Municipality: City of Hamilton
OMB Case No.: PL090779
OMB File No.: PL090779 (See Schedule "1")
OMB Case Name: Artstone Holdings Limited v. Hamilton (City)

PROCEEDING COMMENCED UNDER subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellants: See Schedule "1"
Subject: Official Plan Amendment No. 128 to the Town
of Ancaster Official Plan (PL090780);
Official Plan Amendment No. 18 to the Town
of Dundas Official Plan (PL090781);
Official Plan Amendment No. 118 to the Town
of Flamborough Official Plan (PL090782);
Official Plan Amendment No. 75 to the
Township of Glanbrook Official Plan
(PL090783);
Official Plan Amendment No. 220 to the City of
Hamilton Official Plan (PL090784);
Official Plan Amendment No. 149 to the City of
Stoney Creek Official Plan (PL090785)
Municipality: City of Hamilton
OMB Case No.: PL090779

OMB File Nos.: PL090780-PL090785 (See Schedule "1")

PROCEEDING COMMENCED UNDER subsection 17(40) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: See Schedule "2"
 Subject: Failure of the Minister of Municipal Affairs and Housing to announce a decision respecting the City of Hamilton Urban Official Plan
 Municipality: City of Hamilton
 OMB Case No.: PL101381
 OMB File No.: PL101381 (See Schedule "2")

PROCEEDING COMMENCED UNDER subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellants: See Schedule "3"
 Subject: The new City of Hamilton Urban Official Plan
 Municipality: City of Hamilton
 OMB Case No.: PL110331
 OMB File No.: PL110331 (See Schedule "3")

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant: Auburn Developments Inc.
 Subject: Application to amend Zoning By-law 6593 – Refusal of application by the City of Hamilton
 Existing Zoning: "J" (Light and Limited Heavy Industrial, etc.) District
 Proposed Zoning: "E-3" (High Density Multiple Dwellings) District
 Purpose: To permit a 10 storey student residential building
 Property Address/Description: 17 Ewen Road
 Municipality: City of Hamilton
 Municipal File No.: ZAC-07-062
 OMB Case No.: PL120574
 OMB File No.: PL120574

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant: Auburn Developments Inc.
 Subject: Request to amend the Official Plan – Refusal of request by the City of Hamilton
 Existing Designation: "Industrial"

Proposed Designation: "High Density Residential"
 Purpose: To permit a 10 storey student residential building
 Property Address/Description: 17 Ewen Road
 Municipality: City of Hamilton
 Approval Authority File No.: OPA-07-016
 OMB Case No.: PL120574
 OMB File No.: PL120575

PROCEEDING COMMENCED UNDER subsection 17(40) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: City of Hamilton
 Subject: Failure of Ministry of Municipal Affairs and Housing to announce a decision respecting Proposed Official Plan Amendment No. 25-OP-2009
 Municipality: City of Hamilton
 OMB Case No.: PL131287
 OMB File No.: PL131287

Schedule "1"

Appellants to the amendments to the in-force Official Plans of the former Region of Hamilton-Wentworth, Towns of Ancaster, Dundas and Flamborough, Township of Glanbrook and Cities of Hamilton and Stoney Creek (OMB Case No. PL090779)

OMB FILE NO.
 PL090784

APPELLANT NAME
 Shawcor Ltd.

Schedule "2"

Appellants to the failure of the Minister of Municipal Affairs and Housing to announce a decision respecting the City of Hamilton Urban Official Plan (OMB Case No. PL101381)

OMB FILE NO.
 PL101381

APPELLANT NAME
 A. DeSantis Developments Ltd.
 LIUNA Group Corp.
 St. Joseph's Villa

Schedule "3"

Appellants to the new City of Hamilton Urban Official Plan (OMB Case No. PL110331)

OMB FILE NO.
 PL110331

APPELLANT NAME
 2000963 Ontario Inc.

2051206 Ontario Inc.
2084696 Ontario Inc.
2188410 Ontario Inc.
456941 Ontario Ltd., 1263339 Ontario Ltd.,
and Lea Silvestri
909940 Ontario Inc.
Artstone Holdings Limited
Carmen Chiaravelle, 1694408 Ontario Ltd.,
John Edward Demik, Peter Demik, Demik
Brothers Hamilton Ltd., and Elaine Vyn
City of Hamilton
Corpveil Holdings Limited
Flamborough Power Centre Inc., Flamborough
South Centre Inc., Clappison Five Six
Properties Inc.
Freeland Developments Limited
Gino and Olindo DalBello
Lynmount Developments Limited
Mondelēz Canada Inc. (formerly Kraft Canada
Inc.)
Mud and First Inc.
Multi-Area Developments Inc.
Norman Vartanian
Paletta International Corporation
Paletta International Corporation (re: Elfrida)
Spallacci & Sons Limited
Sullstar Twenty Limited
Twenty Road Developments Inc.
Upper Centennial Developments Ltd.
Waterdown Bay Ltd.

Heard:

December 7, 2015 in Hamilton, Ontario

APPEARANCES:**Parties**

City of Hamilton

DiCenzo Construction Company
Limited**Counsel**

M. Kovacevic

S. Zakem
L. Dean

**MEMORANDUM OF ORAL DECISION DELIVERED BY SUSAN de AVELLAR
SCHILLER ON DECEMBER 7, 2015 AND ORDER OF THE BOARD**

INTRODUCTION

[1] This case is composed of several appeals of various instruments that all relate in some fashion to the City of Hamilton ("City") Urban Hamilton Official Plan ("UHOP").

[2] At the parties' request, the Board agreed to divide the hearing into several segments. Each hearing segment deals with one or more specific topic areas. Pre-hearing conferences to deal with motions, settlements, procedural orders for various hearing segments, and so on, have been interspersed between hearing segments to move matters along in an efficient manner. Decisions issued at the close of each segment set out the specific matters dealt with at that segment.

[3] The matters before the Board in this appearance deal with the appeals by DiCenzo Construction Company Limited ("DCCL") regarding the remaining Natural Heritage System matters. Two DCCL properties are affected: 313 Stone Church Road East and 305 Stone Church Road West.

[4] The parties have been in discussion for some time in an attempt to resolve their difference. The Board was advised that the parties have been unable to resolve their differences regarding 313 Stone Church Road East but have been able to resolve their differences regarding 305 Stone Church Road West.

ISSUES, ANALYSIS AND FINDINGS

313 Stone Church Road East

[5] In its decision and order issued April 9, 2015, the Board, at the request of the parties, set out the scope of the hearing for 313 Stone Church Road East with four, very focussed, issues:

313 Stone Church Rd. E.

1. Should the Core Area (Schedule B) and Significant Woodlands (Schedule B-2) overlays be revised to reflect the actual location of significant woodlands (if any) on and adjacent to 313 Stone Church Rd. E.?
2. Is a vegetation protection zone required for future development on 313 Stone Church Rd. E.? If so, what size of vegetation protection zone should be prescribed for this site?
3. Should an Environmental Impact Study be required to proceed with future development on 313 Stone Church Rd. E.? If so, what should be the scope of any such Environmental Impact Study?
4. Does Policy C.3.2.1(a) impose additional obligations on private landowners to actively maintain/conservate any forest, wildlife and/or wetland features on their lands? If the answer is "yes", what are the limits of such obligations and are they appropriate?

[6] The City brought a motion, returnable at today's appearance, to:

1. exclude a witness and his witness statement,
2. challenge the qualifications of an expert witness to provide an opinion on certain matters, and
3. exclude part of the evidence two expert witnesses intend to give, as suggested in their expert witness statements that were filed.

[7] The City also sought its costs of this motion.

[8] In summary, the City's motion asserts that the basis for the motion is that the witnesses were dealing with matters that were outside of the scope of the hearing and, therefore, not relevant. In the case of the challenge to qualifications, the City asserts that the expert witness is not qualified to provide opinion evidence on certain matters.

[9] In support of its motion, the City cited the agreement between the parties that resulted in the four focussed issues in the procedural order issued by the Board. The parties had also agreed that certain matters would not be before the Board in this

proceeding. Finally, the City cited the fact that the Board had disposed previously of certain matters that the City asserts were now being raised again.

[10] The dispute between the parties regarding 313 Stone Church Road East is one that is hard fought.

[11] In the end, the Board did not hear the motion because the parties reached an agreement on next steps. Specifically, the parties asked the Board to adjourn the hearing of 313 Stone Church Road East to enable an Environmental Impact Study ("EIS") to be undertaken of the subject site.

[12] The terms of reference for the EIS are to be prepared by the City and the results of the study are to be peer reviewed by the City's expert, who is to have appropriate and reasonable access to the subject site.

[13] The parties have agreed that the adjacent City property is no longer part of the DCCL appeal and DCCL has agreed to withdraw its appeal as it applies to the adjacent City property.

[14] DCCL has also agreed to withdraw its appeal with regard to the requirement for a Vegetation Protection Zone, noted in issue 2 above, and has agreed that the policies regarding the provision of a Vegetation Protection Zone in the UHOP would apply. The Board amends the issues list accordingly.

[15] The agreement between the parties sets out their agreed terms of the requested adjournment and was filed as Exhibit 82 in these proceedings. Exhibit 82 is notable for its detailed requirements that have been accepted by DCCL.

[16] The Board agreed to adjourn the hearing regarding 313 Stone Church Road East but declined to set any specific date at this time. The parties are to advise the Board when they are ready to proceed in this matter, at which time the Board will search for an appropriate date for the hearing.

[17] DCCL had provided hard copies of the witness statements and reply witness statements, as appropriate, for Allan Buist, Ian Barrett and John Ghent.

[18] DCCL agreed that it would not call Mr. Buist but Messrs. Barrett and Ghent remain on the witness list for DCCL.

[19] DCCL withdrew the witness statements and reply witness statements, if any, of all three and the Board returned the hard copies of all of these to DCCL.

[20] With the exception of Mr. Buist, whom DCCL will not call, the witness list for DCCL is now set.

[21] The City had also filed hard copies of witness statements and reply witness statements by Catherine Poloz, Christine Newbold and James Dougan regarding 313 Stone Church Road East.

[22] The City also withdrew these witness statements and reply witness statements and the Board returned the hard copies of all of these to the City.

[23] The witness list for the City remains and is set.

[24] If the parties are unable to settle their differences following the completion and peer review of the EIS, the parties have agreed that a new set of witness statements and reply witness statements, if any, will be exchanged and filed within the same periods of time prior to the hearing date as have been set out in the current procedural order.

[25] Finally regarding 313 Stone Church Road East, the Board highlights two key paragraphs here that have been agreed to by the parties, have been submitted to the Board on consent, and which the Board, pursuant to s. 37(c) of the *Ontario Municipal Board Act*, R.S.O. 1990, c. O.28, has agreed to order:

7. DiCenzo (or any related companies or any entity/person to which Mr.

Anthony DiCenzo has any type of interest or is related to, (this provision to be interpreted in the broadest sense) will not file any development applications in respect of the property until its UHOP appeal is decided upon by the Board or it is settled and the settlement approved by the Board...

12. DiCenzo or any representative or agents of DiCenzo shall take no actions (even if they are permitted by law) to alter its property that is subject to the appeal, this includes without limitation tree cutting; vegetation removal or removal of any plant or animal organisms, except alterations or actions required by law or required to complete the EIS and effective until issuance of the OMB Decision on this UHOP Appeal.

305 Stone Church Road West

[26] DCCL undertook an extensive EIS for 305 Stone Church Road West. This study included an analysis of amphibians, plants, vegetative habitat, breeding birds, wildlife observations, species at risk screening and a stream assessment.

[27] The study was reviewed by the City and by the Hamilton Conservation Authority.

[28] The result is that the DCCL, the City and the Hamilton Conservation Authority all agree that certain mapping changes are appropriate to reflect properly the natural heritage elements on the subject site.

[29] The Board is satisfied that a full and proper evaluation has been done and that the changes to the schedules are appropriate.

[30] The proposed changes were filed in these proceedings as Exhibit 82.

[31] Schedule B, Natural Heritage System, is amended by deleting part of an area designated as Core Area.

[32] Schedule B-2, Detailed Natural Heritage Features – Key Natural Heritage Features Significant Woodlands, is amended by deleting the same Core Area that on this Schedule B-2 is designated as woodlands.

[33] Schedule B-4, Detailed Natural Heritage Features – Key Natural Heritage Feature and Key Hydrologic Features Wetlands, is amended by deleting a small area previously designated as a wetland.

[34] Schedule B-8, Detailed Natural Heritage Features – Key Hydrologic Features Streams, is amended by deleting a small area previously designated as streams.

ORDER

[35] With regard to 313 Stone Church Road East, the Board orders that:

1. The hearing of the appeal by DiCenzo Construction Company Limited regarding the application of Natural Heritage System policies to 313 Stone Church Road East is adjourned.
2. The City of Hamilton and DiCenzo Construction Company Limited are to advise the Board when they are ready to proceed.
3. DiCenzo Construction Company Limited is to undertake an Environmental Impact Study whose terms of reference are to be set by City of Hamilton.
4. The Environmental Impact Study is to be peer reviewed by the City of Hamilton's expert consultant who is to have appropriate and reasonable access to the 313 Stone Church Road East on 24 hours' notice and at his own risk.
5. The costs of the Environmental Impact Study and the peer review are to be borne by DiCenzo Construction Company Limited.
6. The issues list for the hearing is amended as set out in paragraph 14 above.
7. Alan Buist will not be called by DiCenzo Construction Company Limited in this matter. The witness list for the hearing of the merits is otherwise now set.

8. Expert witness statements and reply witness statements, if any, will be filed anew as set out in paragraph 24 above.
9. Restrictions on the actions of DiCenzo Construction Company Limited, and interests related thereto, are as agreed to by the parties and are as set out in paragraph 25 of this decision, above.

[36] With regard to 305 Stone Church Road West, the Board orders that the appeal by DiCenzo Construction Company Limited regarding the application of Natural Heritage System policies is allowed in part and Schedules B, B-2, B-4 and B-8 are amended as shown in Attachment 1 to this decision.

"Susan de Avellar Schiller"

SUSAN de AVELLAR SCHILLER
VICE-CHAIR

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

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

ATTACHMENT 1

PL110331: Exhibit 83

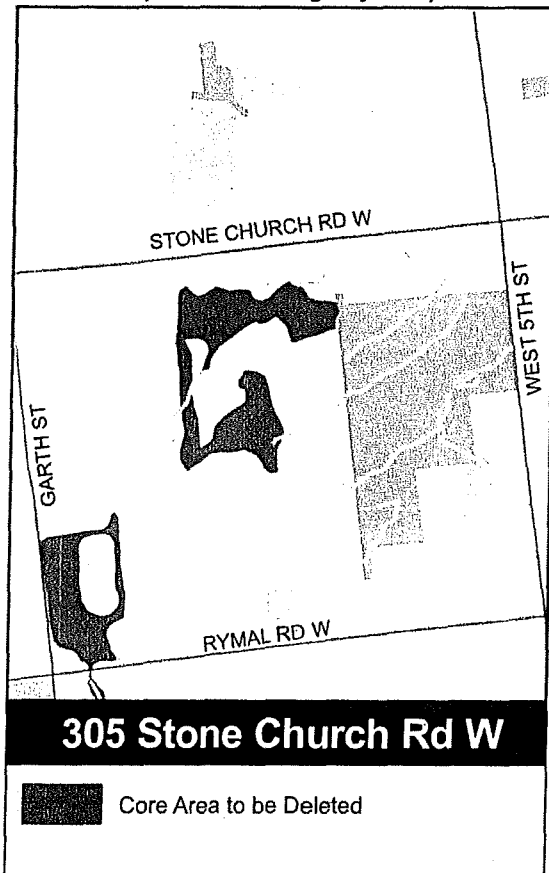
Settlement with DiCenzo Construction Company Limited

305 Stone Church Road West

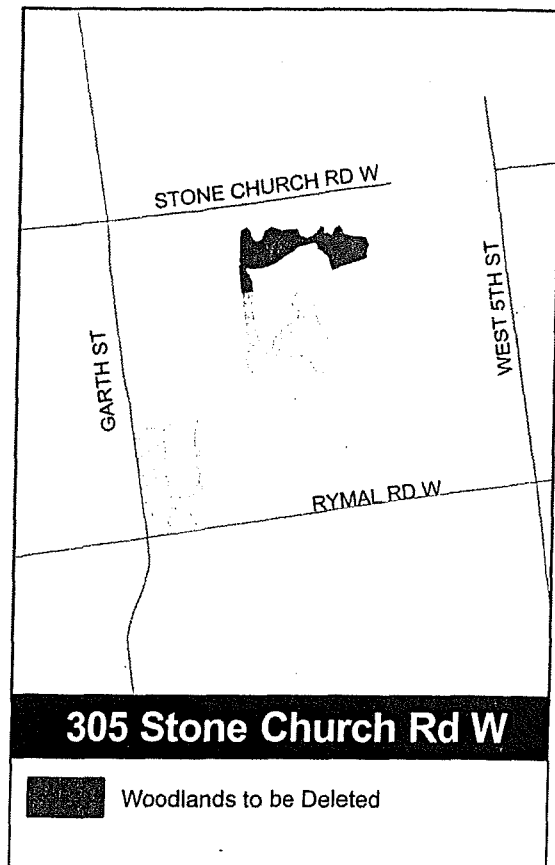
Page 1 of 2

December 7, 2015

Clip of Urban Hamilton Official Plan Schedule B
(Natural Heritage System)



Clip of Urban Hamilton Official Plan
Schedule B-2 (Detailed Natural Heritage
Features - Key Natural Heritage Features
Significant Woodlands)



PL110331: Exhibit 83

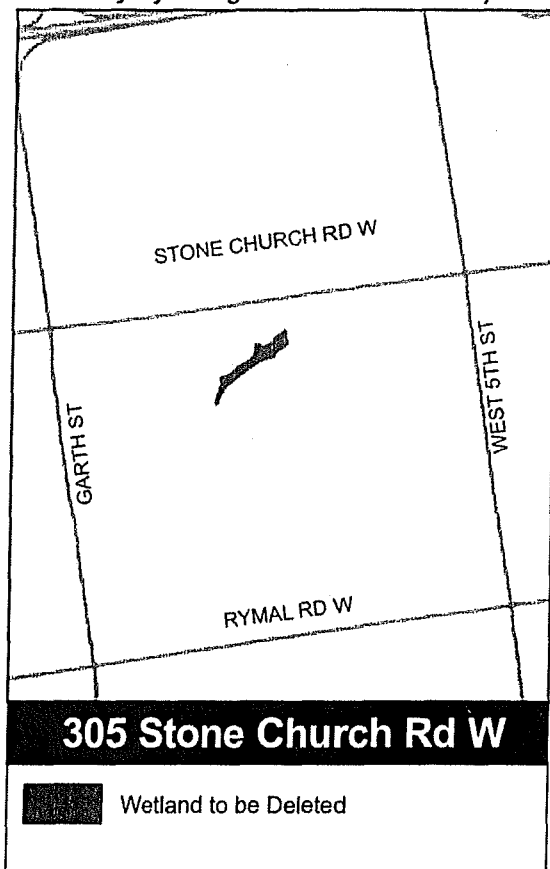
Settlement with DiCenzo Construction Company Limited

305 Stone Church Road West

Page 2 of 2

December 7, 2015

Clip of Urban Hamilton Official Plan
Schedule B-4 (Detailed Natural Heritage
Features - Key Natural Heritage Feature and
Key Hydrologic Features Wetlands)



Clip of Urban Hamilton Official Plan
Schedule B-8 (Detailed Natural Heritage
Features - Key Hydrologic Features Streams)

