

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: October 6, 2022

CASE NO(S):

OLT-22-002496

(Formerly PL110331)

22-260-OLT Attachment A

OLT-22-002493

(Formerly PL090114)

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

Appellant: Paletta International (2000) Inc. et al
Subject: Proposed Official Plan Amendment
Reference Number: MMAH No 25-OP-2006.
Property Address: (All lands within the City of Hamilton)
Municipality/UT: Hamilton/
OLT Case No.: OLT-22-002493
Legacy Case No.: PL090114
OLT Lead Case No.: OLT-22-002493
Legacy Lead Case No.: PL090114
OLT Case Name: Artstone Holdings Limited et al. v. Hamilton (city)

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

Appellant: 1507565 Ontario Inc.
Appellant: 18000615 Ontario and 1536708 Ontario Inc.
Appellant: 2000963 Ontario Inc.
Appellant: 2051206 Ontario Inc.
and others
Subject: Proposed Official Plan Amendment
Reference Number: 25-OP-2009
Property Address: 9255 Airport Road
Municipality/UT: Hamilton/Hamilton
OLT Case No.: OLT-22-002496
Legacy Case No.: PL110331
OLT Lead Case No.: OLT-22-002496
Legacy Lead Case No.: PL110331

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

Subject: Application to amend the Zoning By-law – Refusal of application
 Reference Number: ZAC-07-062
 Property Address: 17 Ewen Road
 Municipality/UT: Hamilton/Hamilton
 OLT Case No.: OLT-22-002499
 Legacy Case No.: PL120574
 OLT Lead Case No.: OLT-22-002496
 Legacy Lead Case No.: PL110331

Heard: August 22, 2022 in writing

APPEARANCES:

Parties

Counsel

DiCenzo Construction
 Company Ltd. (“DiCenzo”)

M. Helfand

City of Hamilton (“City”)

B. Duxbury

DECISION DELIVERED BY WILLIAM R. MIDDLETON AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] This matter proceeded as a Settlement Conference in writing only due to an overall resolution reached between the Parties concerning the Appeals of DiCenzo.

[2] The written materials before the Tribunal were:

- (a) Motion Record of DiCenzo, comprising 293 pages, (which included the Affidavit of Mr. M. Johnston sworn August 4, 2022);
- (b) Supplementary Affidavit of Mr. M. Johnston, sworn August 18, 2022, comprising 22 pages; and
- (c) Draft Final Order, comprising 3 pages, together with Attachment A

thereto, comprising an additional 4 pages.

[3] Briefly put, the Appeal resolved by the Parties related to the lands municipally known as 313 Stone Church Road East in the City of Hamilton (“Site”) owned by DiCenzo, and DiCenzo’s Appeal of aspects of the Urban Hamilton Official Plan which was approved with modifications by the Minister of Municipal Affairs and Housing on March 16, 2011 (“UHOP”) involving certain policies and schedules of the UHOP, related to 6 properties owned by DiCenzo, including the Site.

Evidence and Analysis

[4] Mr. Johnston has been a registered professional planner in Ontario since 2006 but has over 20 years of urban planning experience. He is a Principal with Urban Solutions Planning Consultants Inc. and the Tribunal qualifies him to provide written opinion evidence on urban planning matters, on consent of the Parties.

[5] In his Affidavit and Supplementary Affidavit, Mr. Johnston attested as follows:

(a) He has been involved in extensive consultations with the City which occurred between 2018 and 2020 in respect of the potential development of the Site, and in parallel, settlement negotiations regarding DiCenzo’s appeal of the UHOP;

(b) The Site has frontage on Stone Church Road East and is approximately 6 hectares in size. The Site is mostly vacant. The Site is bounded by 1.5 and 2-storey single-detached homes to the north and to the south (beyond Stone Church Road East). Immediately to the east of the Site is Crerar Neighbourhood Park, Guido De Bres Christian High School, and the terminus of Crerar Drive. Immediately to the west of the Site is open space, beyond which is the Bethel Gospel Tabernacle and the Kingdom Worship Centre;

(c) DiCenzo was one of 33 appellants of the UHOP. Between 2011 and 2016, several Tribunal hearing events occurred in respect of the multiple appeals of the UHOP. Settlement discussions between

DiCenzo and the City occurred during this time period in respect of the Site, however, these discussions did not result in a resolution of DiCenzo's Appeal. In a decision dated April 9, 2015, the Ontario Municipal Board ("OMB") issued a decision and Order setting down a 5-day hearing ("Hearing") in respect of the Site specific UHOP Appeal, scheduled to occur in December 2015;

- (d) The OMB's April 9, 2015 Decision and Order narrowed the issues for the Hearing down to four issues regarding the application of Natural Heritage System polices to the Site. Despite the exchange of evidence, the matter did not proceed to the Hearing in December 2015, as scheduled. Instead, on consent of both DiCenzo and the City, the OMB ordered that the Appeal be adjourned *sine die*, and ordered, among other things, that DiCenzo or any related companies would not file any development applications in respect of the Site until the UHOP appeal was determined;
- (e) Following the OMB's adjournment of the DiCenzo UHOP Hearing, further settlement discussions occurred between DiCenzo and the City and a settlement was ultimately reached. As part of this settlement, DiCenzo and the City established a process whereby the DiCenzo UHOP Appeal would be resolved, and DiCenzo would also be permitted to file applications to permit development of the Site based upon a concept plan reviewed in consultation with the City including a formal consultation process;
- (f) In August 2020, the City and DiCenzo jointly requested that the Tribunal modify its January 20, 2016 Decision and Order to permit DiCenzo to file development applications in respect of the Site. On August 14, 2020, the Tribunal issued an Order amending the January 20, 2016 Decision and Order;

(g) On December 23, 2020, on behalf of DiCenzo, Mr. Johnston's firm filed Official Plan, Zoning By-law Amendment, Draft Plan of Subdivision, Common Element Condominium, Draft 16 Plan of Standard Condominium and Site Plan applications, to permit the development of 221 residential units, in accordance with the process agreed to with the City. The development also included the dedication of a 1.15 hectare natural heritage block to protect the identified woodland on Site. Draft Plan Conditions were agreed upon requiring the preparation of an edge management plan, among other plans and studies, to ensure the vegetation community on the Site is appropriately protected and maintained;

(h) In a report, dated December 7, 2021, City staff recommended approval of the DiCenzo development applications. Staff concluded that:

the Official Plan Amendment, Zoning By-law Amendment and Draft Plan of Subdivision (submitted on behalf of DiCenzo) would result in the long-term protection of 1.15 hectares of the woodland. The long-term protection of the woodland and a viable housing development will support the creation of complete communities. Therefore, the proposed development is consistent with the PPS (2020);

(i) At its meeting of December 15, 2021, Council for the City adopted Official Plan Amendment No. 157, passed Zoning By-law Nos. 21-238 and 21-249 ("ZBAs") and granted Draft Plan of Subdivision approval, subject to Draft Plan conditions. Conditional Site Plan approval was subsequently granted on March 1, 2022. Council's approval of the ZBAs were appealed by one individual, which appeal was dismissed by the Tribunal in a decision dated May 13, 2022 (Tribunal Case No. OLT-22-002235);

(j) On December 22, 2021, DiCenzo and the City executed Minutes of Settlement, which provide for the settlement of DiCenzo's UHOP Appeal, through a modification of the UHOP in accordance with the proposed Official Plan Amendment ("OPA") (now appended to this

Decision as Attachment A). Under the UHOP, a small portion of the Site is proposed to be identified with a Natural Heritage System overlay on Schedule B, and Key Natural Heritage Feature Significant Woodlands overlay on Schedule B-2. The settlement between the City and DiCenzo proposes to remove both overlays from a small portion of the Site. The draft OPA will facilitate the proposed map changes to the Schedule B and B-2 of the UHOP outlined above. The approval of the draft OPA will bring the subject property into conformity with the UHOP and reflect the December 2021 Council-approved development;

- (k) It is Mr. Johnston's opinion that the Draft Plan and Site Plan conditions of approval adequately ensure that all matters of provincial interest established by the *Planning Act* R.S.O. 1990, c. P.13, as amended, ("PA") are addressed. Specifically, those matters related to the protection, conservation, and maintenance of natural heritage systems. As such, the proposed OPA is consistent with section 2 of the Provincial Policy Statement, 2020 ("PPS") and conform to both section 4.2 of the Growth Plan for the Greater Golden Horseshoe, 2020 ("Growth Plan") and the relevant natural heritage policies established within the UHOP; and
- (l) It is Mr. Johnston's professional planning opinion that the OPA to remove appropriate portions of the Core Areas designation and Key Natural Heritage Feature Significant Woodlands designation has regard for matters of provincial interest as identified in the PA, are consistent with the PPS, fully comply with and implement the Growth Plan, comply with and implement the goals and objectives of the UHOP and implement the Official Plan Amendment, the Zoning By-law Amendment, the Draft Plan of Subdivision and the Site Plan, and further represents good land use planning.

[6] Based on the uncontradicted expert opinion evidence of Mr. Johnston summarized above in paragraph [5], and upon a review of the applicable provisions of the PA, the PPS, the UHOP, the Tribunal determines that the OPA appended hereto as Attachment A satisfies the relevant requirements of the PA, the Provincial Policy Statement, 2020, the Growth Plan for the Greater Golden Horseshoe, 2020, the Urban Hamilton Official Plan and the Zoning By-law Amendment, the Draft Plan of Subdivision and the Site Plan. Moreover, the Tribunal is of the view that the settlement reached by the Parties is fair and reasonable and that the resultant OPA reflects principles of good planning.

ORDER

[7] THE TRIBUNAL ORDERS THAT

- (a) The appeal filed by the Appellant DiCenzo Construction Company Ltd. is allowed, in part;
- (b) The Tribunal hereby approves the Official Plan Amendment appended hereto as Attachment A (“Official Plan Amendment”); and
- (c) The Tribunal authorizes the municipal clerk of the City of Hamilton to assign a number to, and format as may be necessary, the Official Plan Amendment.

“William R. Middleton”

WILLIAM R. MIDDLETON
MEMBER

Ontario Land Tribunal

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

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

ATTACHMENT A**22-260-OLT**

Schedule "1"

**Urban Hamilton Official Plan
Amendment No. 178**

The following text, together with:

Appendix "A"	Volume 1: Schedule B – Natural Heritage System
Appendix "B"	Volume 1: Schedule B-2 – Detailed Natural Heritage Features Key Natural Heritage Feature Significant Woodlands

attached hereto, constitutes Official Plan Amendment No. 178 to the Urban Hamilton Official Plan.

1.0 Purpose and Effect:

The purpose and effect of this Amendment is to remove a portion the "Core Area" identification and a portion of the "Key Natural Heritage Feature Significant Woodlands" identification from the subject lands, to permit the development of a maximum of 221 new residential dwelling units; and, the preservation of a 1.15 hectare woodlot.

2.0 Location:

The lands affected by this Amendment are known municipally as 313 Stone Church Road East, in the former City of Hamilton.

3.0 Basis:

The basis for permitting this Amendment is:

- The proposed development supports the residential intensification policies of the Urban Hamilton Official Plan through the creation of residential areas consisting of a range of housing types and densities to satisfy a range of housing needs;
- The proposed development is compatible with the planned and existing development in the immediate area;
- The proposed development provides long term protection of the 1.15 hectare woodlot on the subject lands through dedication to the City for Natural Open Space purposes; and,

- The Amendment is consistent with the Provincial Policy Statement, 2020 and conforms to the Growth Plan for the Greater Golden Horseshoe, 2019, as amended.

4.0 Actual Changes:

4.1 Volume 1 – Parent Plan

4.1.1 Schedule

- a. That Volume 1: Schedule B – Natural Heritage System be amended by removing a portion of the "Core Area" identification on the subject lands, as shown on Appendix "A", attached to this Amendment.
- b. That Volume 1: Schedule B-2 – Detailed Natural Heritage Features Key Natural Heritage Feature Significant Woodlands be amended by removing a portion of the "Key Natural Heritage Feature Significant Woodlands" identification on the subject lands, as shown on Appendix "B", attached to this Amendment.

5.0 Implementation:

An implementing Zoning By-Law Amendment, Draft Plan of Subdivision, and Site Plan will give effect to the intended uses on the subject lands.

This Official Plan Amendment is Schedule "1" to By-law No. 22-260-OLT passed on the 6th day of October 2022.

**The
City of Hamilton**

F. Eisenberger
MAYOR

A. Holland
CITY CLERK



