

Highland Gate park approval delayed amid legal questions

By Brock Weir

Plans for a 21-acre park through the heart of the Highland Gate redevelopment plan have been put on the back burner for a week to allow stakeholders to get some legal clarity.

Council, sitting at the Committee level last week, voted to put their approval of the park's concept plans on ice until July 4 after some legal uncertainty swirled through Council chambers.

At issue are a number of features earmarked for the park, particularly lighting along proposed trails.

Although area residents have differing views on various amenities agreed to by proponents Highland Gate Developments Inc. (HGDI), the Highland Gate Ratepayers Association, and Council in Minutes of Settlements executed by the Ontario Municipal Board, the trail lighting has been a recurring theme in the process.

Many residents are advocating for a passive recreation park without the lighting and, as trail lighting is specifically mentioned in the Minutes of Settlement, it is the view of the Town Solicitor that any deviation from the plan would be in violation of the agreement.

This is worth a second look, said resident Gordon Weir, delegating to local lawmakers last week.

As an area resident, as well as a lawyer, he offered a differing view of the Minutes of Settlement.

Over three quarters of homeowners, he said, want a "natural and unencumbered park with no lighting structures or activity equipment" and following through on the wishes of residents would not be in violation of the agreement.

"Removal of the lighting, structures or playground amenities that are acceptable to Town Council need not be renegotiated and are not contrary to the minutes of settlement," said Mr. Weir. "The minutes of settlement do not need to be changed. In fact, the minutes of settlement themselves anticipated changes and modifications. The Minutes themselves stipulate that provision of all parkland amenities must be to the satisfaction of the Director of Parks and Recreation, that is to say the Town. Secondly, all covenants by the owner to provide parkland amenities have been made to the Town only. These undertakings or covenants may be waived by the Town as they see fit. Simple, elementary, fundamental contract law.

"These are undertakings the developer gave to the Town, not to the Ratepayers' Association, not to anybody else. Legally speaking, the minutes of settlement endorsed by the OMB make it clear the Town retains discretion as to the nature and use of the open space parkland and that is why it is called a concept, that is why it is a conceptual parkland design. It is intended to be modified, amplified, taken back, fine-tuned and so on and so forth."

Mr. Weir's view was bolstered at the podium by Highland Gate resident Bob Callow who said he was speaking on behalf of what he described as an "ad-hoc association of homeowners" who will be directly impacted by the park development.

"We have a historic opportunity with a piece of land that is irreplaceable to create a passive park that will educate and delight our children and grandchildren for generations," he said. "In every election, the issues of openness and transparency to the people of Aurora are cornerstones to the election and what we firmly believe in. In the case of what to do about the parkland, sometimes there has been a distinct lack of transparency.

"The ordinary person did not have the details we have today. We were asked to support the Board and that they ratify the agreement based on some very broad brush stroke figures. We did not know all of the details. We believe for Council to make a decision on this park you should know the validity of the information you are given."

From the perspective of Town Solicitor Patricia De Sario, however, the Minutes of Settlement have particular terms and if Council makes any decisions that are "in direct conflict with those expressed terms" then they would be going against the agreement.

This was enough for Councillor Paul Pirri, who motioned to refer the item back to staff until July 4, to allow for a closer look.

"Ultimately, I think we can debate these issues until we are blue in the face but without the expressed okay from the other two parties I don't think anything can be changed," he said. "I want an itemized list of everything our residents have asked us to change, I would want to present that list to the other two organizations to see if they are amenable to making changes where we would require their knowledge and then, if they come back and they say yes, great, we can come back and have a debate on whether or not we're going to change those. If they come back and say no, any debates that we have would be an ineffective use of our time because ultimately we need them to be supportive of any changes we make."

Others, including Councillors John Abel and Wendy Gaertner said they were in favour of the suggestions made by residents.

"We're here to represent the residents," said Councillor Gaertner. "If the majority of them around the golf course don't want lighting then we should listen to them."

Added Mayor Geoff Dawe: "All of the parties have committed to act reasonably and cooperate in order to implement the minutes of

settlement. We can't be seen to be delaying the situation. I think that is a sensitive issue. We need to be very cognizant that the conversation is between Town Staff, HGDI and the Highland Gate Ratepayers Association. We have to be very clear who the parties are and where that discussion happens.?