

Future of Highland Gate sparks war of words between MPP and Developer

By Brock Weir

With Highland Gate Developments Inc.'s (HGDI) proposal to sell its former golf course lands to the Town of Aurora for \$98.1 million rejected by Council last week, neighbours and politicians alike have raised alarm bells over encroachments surrounding the property.

Following Council's 5 ? 3 vote to reject the offer, residents with properties bordering on the golf course lands, which are slated to be transformed into a 180+ residential development and 10-storey condominium complex near Yonge Street in plans now before the Ontario Municipal Board (OMB), have raised concerns over HGDI's plan to address potential encroachments ? including fences and plantings ? this week.

Residents approaching The Auroran said they would not go on the record with their worries last week, but MPP Chris Ballard lent his voice to the debate, saying those who approached him were feeling ?intimidated.?

?I have had a number of phone calls this week from residents who have issues with alleged encroachment on the golf course who are being told the company will be taking early action this week and they are very concerned and they feel uncomfortable, and even intimidated about speaking out,? said Mr. Ballard, who summarized these thoughts in a press release, noting neighbours dispute the encroachment issues. ?Until that is settled, [the residents] don't think the development company should be coming on the land. Nor do I. Given the time of the season, perhaps we can step back for a few months, take a deep breath, and see where the OMB goes and maybe some of the homeowners will be able to resolve this with the developer.?

His views, however, prompted a strongly worded response on Sunday from Mark R. Flowers and Ira T. Kagen, lawyers from Davies Howe Partners, co-counsel to HGDI. In their widely distributed response, which was copied to Premier Kathleen Wynne, Mayor Geoff Dawe, and a number of officials, they disputed the view there is anything ?in dispute? regarding these encroachments.

?You have referred in the Press Release to ?perceived encroachment issues' and structures you claim HGDI ?believes' are encroaching on the lands,? they wrote to Mr. Ballard. ?To be clear, any encroachments on the Lands are not ?perceived', nor are they simply the ?belief' of HGDI; rather, we understand that all existing encroachments have been properly identified by an Ontario Land Surveyor licenced under the Surveyor's Act. If you have any information to the contrary, kindly provide it to us immediately.?

Their response also took aim at Mr. Ballard's stated wish that action be halted until ?boundary issues are resolved.? This, they said, insinuates there is a question over HGDI's ownership of the lands, which they said is not the case and challenged Mr. Ballard to elaborate on his ?allegation.?

?You refer? to a resolution adopted by Aurora Council on December 8, 2015 that HGDI ?be requested to hold off on addressing any encroachments until such time as the OMB appeal is fully decided.' Although your statement may be factually accurate, it is worth noting that a municipal council has no authority to prevent a landowner from exercising its legal property rights in this regard.?

HGDI engaged in extensive public consultation with area landowners throughout the course of the year and sent letters to 190 households, offering to meet with residents individually over their properties and the proposed development, they contend. 40 agreements were signed with adjacent landowners with a further 50 in process, but these were contingent on the Town approving their development application. After three public planning meetings, the lawyers argue Council failed to make any decision on the matter which left things uncertain, and these agreements are off the table.

Although municipal staff were working on a January date for a further Public Planning meeting, the lawyers' response argues ?no specific date? was actually set.

?As a result, with no end to the municipal planning process in sight, HGDI exercised its right to appeal the application to the OMB.

We appreciate that Aurora Council was under no legal obligation to make a decision on the applications within any particular timeframe. However, Council's failure to make any decision, or even identify when a decision would be made, resulted in the applications being appealed to the OMB. Therefore, it was Council's failure to make a decision on the applications that ultimately led to the agreements between HGDI and the various residents being null and void.?

Nevertheless, they said the developers continue to believe the applications and encroachment issues can be resolved through a comprehensive settlement with both the Town and the residents that is in the public interest and respects the rights of all parties involved.?

When Council convened last Tuesday to reject the offer, some of the issues addressed by Mr. Ballard were offered by Council members, including Councillor Michael Thompson who said he was concerned with the actions of the developer without elaborating on what these concerns were, as well as Councillor Sandra Humfryes who said she hoped for continued dialogue on the encroachment issue.

Mayor Dawe said he voted against rejecting the offer outright at this point in time not out of support of buying the land, but to provide the Town with a chance to work with all parties on specific encroachment issues.?

Mr. Ballard, meanwhile, rejected the demands of Davies Howe Partners LLP to retract his statement.

I tried to build a reputation as a Town Councillor to try and help people have a voice in planning and I am still a strong believer and I will continue to push for that, he said There shouldn't be any residents of Aurora who feel intimidated or fearful in coming forward to express their opinions in a public forum.?