

Ratepayers prepared to go 'toe to toe' with developer over Highland Gate

By Brock Weir

Ratepayers in Aurora's Highland Gate area are prepared to go 'toe to toe' with developers over the redevelopment of the former golf course, according to their lawyer Stephen D'Agostino, but first they will take a crack at mediation.

Mr. D'Agostino, a municipal affairs lawyer, has been retained by the Highland Gate Ratepayers Association to fight for their position at the Ontario Municipal Board (OMB) against Highland Gate Developments Inc. and their plans to transform the former Highland Gate Golf Course into a housing development of 180 homes and a 10-storey condominium complex.

He spoke to area residents at a gathering of ratepayers at Town Hall last week to give them an update on the situation, informing them they will be going to the mediation table this August in an attempt to resolve outstanding issues.

'We are prepared to go toe to toe with the developer over the issues we care about,' he said. 'If the parties agree, they can try to mediate a case. A Board mediation is not a trial, but an attempt by the parties to settle the big issues. They don't have to settle everything, but if you can settle some issues it makes the hearing cheaper and easier to manage.'

'In this matter, I said to my instructing committee that if we were to mediate some of our issues, that is a good thing to do. The reason why we mediate is even if you have the best case in the world, there is something called litigation risk. You can lose. The reason you can lose if you have the best case in the world is because the person at the front of the room hearing the case might be having a bad day, they might not believe your witness for reasons that have nothing to do with the qualifications of the witness. Your witness could be having a bad day and admit something in the cross-examination they wouldn't ordinarily admit.'

Dates for the mediation, which will be closed to the public and confidential, are to be set in stone this week and are likely to be held in mid-August on the days originally set aside by the Ontario Municipal Board for continued pre-hearings which began earlier this spring.

'If we can't settle the big issues through mediation, then we're going to go off to war and we're going to fight the developer with all the tools available to us,' said Mr. d'Agostino, who became familiar with the Highland Gate property fighting a similar development plan that came forward on the land over 20 years ago. 'But, if we can settle it, that is good economy and we should give that a try.'

'If winning means no development at all, I don't think we can win. 20 years ago, when I fought this fight in front of a different developer and a differently configured ratepayers association, we found a technical argument that completely defeated the development and I don't think that technical argument is available to us the same way that it is today. Can we control development? Absolutely. Can we reduce the size of the development? Absolutely. Can we make this rational? [The Town's] Official Plan says that it has to be.'

'This is a case where you have an opportunity to significantly influence the outcome if you participate and participate in a strong manner and my sense is that is what the [Ratepayers Association] is doing and that is what their intention is. That is why I am here. I didn't sign up to lose, I signed up to win.'

As a municipal lawyer, Mr. D'Agostino told the residents that he has fought for developers and ratepayers alike over his career and is well versed with both sides of the coin. When acting as a lawyer against ratepayers, he said he 'almost invariably' wins because the Ontario Municipal Board's process is evidence-based while ratepayers often simply show up to sound off on why they don't like a particular development and leave. That, he said, is the 'kiss of death' for any OMB hearing.

'It is a myth that the OMB is pro-development,' he said 'What it is is typically ratepayers associations don't have the guidance to understand that this is an evidence-based process. Secondly, ratepayers don't have the financial benefits that a developer has that allows them to invest in the cost of an OMB proceeding, and the cost of participating in this process is large not only in terms of

time but real dollars. You have to compete with someone who is going to make millions of dollars if they are successful. What do you get if you're successful? You get to maintain the value of their homes.?