

ISSUE DATE:

September 26, 2013



PL120064

Ontario
Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Subject	Site Plan
Referred by:	Weldan Properties (Haig) Inc.
Property Address/Description:	1125, 1135, 1153, 1157 & 1161 Haig Blvd.
Municipality:	City of Mississauga
OMB Case No.:	PL120064
OMB File No.:	PL120064

APPEARANCES:

Parties

Counsel

Weldan Properties (Haig) Inc.	Gerald Swinkin
City of Mississauga	Marcia Taggart

DECISION DELIVERED BY J. de P. SEABORN

INTRODUCTION

[1] The matter before the Board relates to an unresolved condition following a hearing in which Weldan Properties (Haig) Inc. ("Weldan") sought approval of its site plan relating to a townhouse development on Haig Boulevard ("Haig"). The site plan hearing was concluded in 2012 and an interim decision was issued on November 19, 2012. That decision gave direction that various aspects of the site plan be amended and conditional site plan approval was given. Counsel approached the Board and requested a re-attendance to resolve one condition, described below. The member who conducted the site plan hearing is no longer a member of the Board and given that I issued the decision approving the official plan amendment and by-law amendment, with the consent of the parties, I conducted this hearing to conclude the site plan matter.

ISSUE

[2] At the site plan hearing, a list of the conditions in dispute between the City of Mississauga (“City”) and Weldan were filed (Exhibit 13). The proposal by the City suggests additional measures to prevent errant golf balls from entering the Weldan property was not addressed with sufficient clarity when the site plan and associated conditions were approved. The City’s position is that additional fencing is required either at the Weldan property line or within the area set aside as parkland dedication to mitigate against errant golf balls. Weldan’s position is that the separation distance between the golf course and the development is sufficient. If the City is concerned about errant golf balls, it can make simple changes to the 7th hole to direct the play away from the boundary between the golf course and the Weldan property line. The onus lies with the operator of any golf course to prevent errant golf balls from leaving its property. Accordingly, there is nothing further required from Weldan in this regard.

[3] In the interim decision issued on November 19, 2012, addressing the site plan matter, the Board indicated that Mr. Baker did not agree with the 10 m high fence proposed by the City; however, clear direction was not given as to whether the condition should be required of Weldan. Mr. Heaslip did not appear as a witness at the site plan hearing although he did testify at the hearing in respect of the official plan and zoning by-law amendments.

EVIDENCE AND FINDINGS

[4] In support of the condition that recommends additional fencing on the Weldan property, the City called Robert Heaslip, a golf course architect and David Marcucci, a planner employed by the City. Ted Baker, retained by Weldan and also qualified as a golf course architect, testified in opposition to the City’s condition.

[5] By way of background, the Weldan property backs onto the Lakeview Golf Course (“golf course”). Both Mr. Heaslip and Mr. Baker testified at the hearing, which resulted in a decision, approving the necessary official plan and by-law amendments. At that hearing, considerable evidence was presented in respect of the extent to which errant golf balls leave the 7th hole and land on the Weldan property. While it is not an exact science, the evidence was clear that golf balls have typically landed beyond the existing chain link fence (which represents the golf course out of bounds area) and entered the Weldan property. Mr. Baker testified that it can reasonably be concluded

that the situation has existed for many years. Mr. Marcucci testified that he was unaware of any complaints associated with errant golf balls. However, the portion of the Weldan property that backs onto the golf course is a vacant treed area, representing the rear yards of the homes slated for redevelopment. So while the experts agreed that golf balls have typically landed beyond the limits of the golf course, as a practical matter the City has not had to address the issue and is concerned, in light of the redevelopment, that these errant golf balls will now become a hazard.

[6] To address the concern, the City is requesting that Weldan erect a 10 m chain link fence along what will be a new boundary between City property and the townhouse development. Alternatively, Mr. Heaslip recommended that four 10 m fences be constructed (on angles) within the area of parkland dedication. Weldan is resisting the condition for several reasons. The property line between the City and the Weldan property is adjusted as a result of the parkland dedication. A significant area, at the rear of the Haig properties, is shown on the site plan as parkland dedication. This provides greater separation between the golf course out of bounds, represented by the existing chain link fence, and the Weldan property. As a practical matter, errant golf balls are likely to land within the area marked for parkland dedication (City property), not on the Weldan property prior to the adjustment of the property line. Nonetheless, the City maintains that golf balls may continue to land beyond the area slated for parkland dedication. On this point, the City relied on a count undertaken by Weldan estimating that in any single golf season (mid-April to mid-October) upwards of 350 to 500 golf balls might be expected to land on the Weldan property. It is because of this count and Mr. Baker's original report recommending the establishment of a 60 m separation between the existing centre line of play for the 7th hole and the Weldan property line (prior to parkland dedication) that Mr. Heaslip urges the erection of a 10 m chain link fence at the rear of the townhouse development as additional protection.

[7] Weldan's position, and one I accept, is that it is the City's responsibility to ensure that errant golf balls do not go beyond the limits of the golf course. The City has erected fencing along other portions of the golf course (at the out of bounds property line), most notably at the 11th hole (adjacent to Dixie Road) where a 6 m chain link fence has been installed. At the 11th hole, the distance of separation from the centre line of the fairway to the property boundary is 45 m. The City could choose to erect a higher fence at the golf course out of bounds along the 7th hole to address the matter of errant golf balls, however, it is reluctant to do so due to the heritage nature of the golf course. Yet, the

City agrees that errant golf balls have typically landed on the Weldan property. The City has not taken any steps to rectify the situation because there have been no complaints. The City now finds itself in a situation, because of the redevelopment, where there could be complaints arising from errant golf balls and therefore, the proposed condition for a 10 m fence. Weldan simply does not want a 10 m fence erected at the rear of its property line, especially in circumstances where it would be first, of questionable utility and second, as Mr. Baker testified, other solutions exist that are within the control of the City.

[8] Mr. Heaslip recommended a two-fold solution. First, he suggested additional planting within the area slated for parkland dedication. This is a sensible recommendation and consistent with Mr. Baker's report (Exhibit 33). Mr. Baker's report indicated that the existing trees within the area slated for parkland dedication typically catch the errant golf balls. Additional planting would serve to reinforce the existing situation. It is significant to recall that this heavily wooded area represents the rear yards of the Haig properties. Tree planting within the area for parkland dedication is not opposed by Weldan. The second recommendation by Mr. Heaslip which the City wants as a condition of site plan approval is the addition of the 10 m fence, either along the Weldan property line or within the parkland dedication area (installed by Weldan during construction). On this point, I accept the opinion of Mr. Baker that the recommended fence would be of little, if any, utility. Mr. Baker's opinion was that the fence would be redundant and would not contribute to the heritage character of the golf course. As indicated above, to the extent that errant golf balls land within the parkland dedication buffer, they would simply be caught by the trees. The City agrees that additional forest management practices within the parkland dedication area will improve the effectiveness of this safety zone between the development and the golf course out of bounds.

[9] In addition to planting within the parkland dedication area, Mr. Baker provided other suggestions that would, in his view, negate the requirement for additional fencing. It was his understanding that the City is amenable to his mitigation measures, albeit Mr. Heaslip recommended the 10 m fence as additional protection beyond the requirement for acoustic fencing along the proposed property line and the hedge row of trees along the existing property line. Mr. Baker suggested that while only 1.4% of the players hit errant shots beyond 25 m of the existing property line, the fairway for the 7th hole could be easily redefined by mowing and planting practices that would shift the centre line

thereby increasing the separation between the fairway and the new property line (following parkland dedication). In short, the play of the 7th hole can be redefined to provide a separation between the centre line and the development of 60 m.

[10] It was Mr. Baker's view that 60 m exceeds industry standards. However, a 60 m separation is consistent with the recommendation provided by Mr. Baker when he prepared his original report. The shift of the centre line can be accomplished by mowing practices, additional rough and planting of trees, all of which will move play even further away from the current out of bounds along the 7th fairway. These mitigation measures will not affect the heritage character of the golf course. Mr. Baker also relies on the parkland dedication area itself as additional protection. The shift in the property line will mean that, for the most part, errant shots will land in the wooded parkland dedication area as opposed to on the Weldan lands, which is the existing situation. Supplemental planting, maintenance of the wooded area and enhancement of the wooded area will also aid in preventing errant golf balls from going beyond the property line (following parkland dedication). It was Mr. Baker's view, which I accept, that a chain link fence that is as high as the adjacent trees is redundant in its use in deflecting errant golf balls. In any event, with the mitigation measures recommended by Mr. Baker, the incidence of errant balls falling beyond the boundary of the wooded area lands to be conveyed, at 56 m from the 7th hole, is insignificant.

DECISION

[11] For all of the reasons given, the Board will not require as a condition of site plan approval the erection by Weldan of a 10 m fence as described in item 1, Community Services-Parks, Exhibit 13, p. 5. Counsel indicated at the conclusion of the hearing that they will advise the Board when the site plan drawings are finalized, the other conditions (not in dispute) are satisfied and thereafter the Board's order will issue.

"J. de P. Seaborn"

J. de P. SEABORN
VICE CHAIR