EXTRACT FROM COUNCIL MEETING OF TUESDAY, JANUARY 20, 2015

7. ADOPTION OF ITEMS NOT REQUIRING SEPARATE DISCUSSION

Items 1 (with the exception of sub-items 7, 13, and 20), 2, and 3 were identified as items not requiring separate discussion.

Moved by Councillor Gaertner
Seconded by Councillor Thompson

THAT the following recommendations with respect to the matters listed as "Items Not Requiring Separate Discussion" be adopted as submitted to Council and staff be authorized to take all necessary action required to give effect to same:

1. General Committee Meeting Report of January 13, 2015

THAT the General Committee meeting report of January 13, 2015 be received and the following recommendations carried by the Committee be approved ***(with the exception of sub-items 7, 13, and 20)***:

(15) LLS15-008 – Highland Gate Golf Club – One-Foot Reserves

THAT Report No. LLS15-008 be received; and

THAT staff place additional information about the Highland Gate Golf Club property on the Town's website as new information is obtained.

CARRIED

EXTRACT/CORRESPONDENCE ROUTING INFORMATION							
External Correspondence was sent by Council Secretariat:			**YES**			**NO**	**X**
External Correspondence to be sent by:							
ACTION DEPT.: (To Director and Assistant)	CAO	Building & By-law	Corporate & Financial	Infrastructure & Environmental	Legal & Legislative	Parks & Recreation	Planning & Development
ACTION STAFF: (If other than above)							
INFO. DEPT.: (To Director and Assistant)	CAO	Building & By-law	Corporate & Financial	Infrastructure & Environmental	Legal & Legislative **X**	Parks & Recreation	Planning & Development **X**
INFO STAFF: (If other than above)							

TOWN OF AURORA
GENERAL COMMITTEE REPORT No. LLS15-008

SUBJECT: ***Highland Gate Golf Club – One-Foot Reserves***

FROM: ***Warren Mar, Director of Legal & Legislative Services/Town Solicitor***

DATE: ***January 13, 2015***

RECOMMENDATIONS

THAT report LLS15-008 be received for information; and

THAT staff place additional information about the Highland Gate Golf Club property on the Town's website as new information is obtained.

PURPOSE OF THE REPORT

The purpose of this report is to provide Council with information regarding the existence of one-foot reserves within and adjacent to the Highland Gate Golf Club property.

BACKGROUND

The Highland Gate Golf Club and associated golf course property ("Highland Gate") has existed since 1931, from Yonge Street in the east to Bathurst Street in the west, lying south of Kennedy Street West. Over time, the original golf course has shrunk and been subjected to infill development, which has shaped the present-day course. The current municipal address is 21 Golf Links Drive.

In the 1980s Highland Gate experienced significant development over multiple phases and multiple subdivision plans that created the residential areas that exist through the middle of the golf course (as shown on Figures 2A, 2B, 3A, and 3B). Through a development corporation called Granada Investments Inc., residential development occurred along the newly-created Golf Links Drive, Timberline Trail, Cranberry Lane, and other adjacent new roadways. According to Town records, these phases occurred from 1980 until 1987, leaving the development within the golf course lands how it looks today. During this period of development, most of the one-foot reserves were established, joining existing one-foot reserves that were placed earlier in time (the 1960s) that abut the stub-end of roads that end on the northeast and southeast portion of the golf course (e.g., at the end of Highland Court and Eldon Crescent). All of these one-foot reserves are shown on Figures 4A and 4B.

In the early 1990s Granada Investments Inc. submitted plans and applications (which were later taken over by Kingridge Investments) to further infill certain portions of Highland Gate that were

not developed in the 1980s. This included plans for a portion of the golf course north of the road known as Highland Gate adjacent to Bathurst Street; along Murray Drive across from Trillium Drive; and between Marsh Harbour and Cranberry Lane. In 1991, after hearing from the applicant and residents in the area, Council decided not to approve further development until certain golf course design and planning matters could be addressed and it could be assured that the golf course could still function properly with the additional development. Council also declared that the existing one-foot reserves would remain in place.

Well into 1992, the developer continued to work with the Town to address the concerns raised by Council and staff. Thereafter, development sputtered to a halt (as the Toronto-area real estate market was in severe decline and reaching its nadir at this time), and the Town's file related to this residential development at Highland Gate was closed in 1995.

According to Land Registry Office records, ClubLink is the current owner of Highland Gate, having purchased the property in 1997. In 2004, applications were submitted to construct a new clubhouse and parking lot for Highland Gate, at its current location on Golf Links Drive.

The above is a brief summary of how development has proceeded at Highland Gate in the recent past. There are currently over 20 file boxes being stored by the Town related to all of the above development.

ClubLink recently announced that as of November 9, 2014, Highland Gate was permanently closing. On November 25, 2014, Council adopted the following resolution:

> "*THAT staff be directed to provide information regarding the one-foot reserve around the Highland Gate Golf Course.*"

As staff were researching the title and property issues of the golf course, it was discovered that certain transfers recently occurred on the Highland Gate lands. The entire golf course is made up of a complicated set of over a dozen individual parcels of land, as recorded by the Land Registry Office.

After further discussions with ClubLink, in late December 2014 staff were informed that ClubLink has an agreement in place to sell a 50% interest in the Highland Gate lands to Geranium Corporation, and ClubLink and Geranium Corporation will be jointly proceeding with residential development in Highland Gate. This was announced publicly on December 23, 2014. Title to the entire Highland Gate lands will be held by a holding company/trustee by the name of Aurora (HGD) Inc. These transfers of title and ownership are currently underway.

To date, there has been no application filed with the Town to develop the Highland Gate golf course lands. Staff will keep Council and the public informed as matters progress on the site.

COMMENTS

The Legal Nature of One-Foot Reserves

One-foot reserves along public highways or at the end of public highways are a common planning tool used by municipalities in order to control access and development, and enable municipalities to require that developers enter into the appropriate development agreements and installation of services before building permits are issued.[1] Once construction is completed, occupancy is granted by the municipality and underlying services are assumed, at which point the one-foot reserves usually become part of the public highway and municipal street.[2] One-foot reserves are basically a way to guide development and ensure that it occurs in an appropriate fashion, according to established plans, guidelines, and provincial policies.

While municipalities have been able to uphold the use of one-foot reserves in court as a proper planning tool, the use of one-foot reserves is subject to certain rules, as established in case law.

As far back as 1965, Ontario courts have recognized that the use of one-foot reserves has limitations. For example, the Ontario High Court of Justice ruled that restricting access over a one-foot reserve, taken as part of a road expropriation, cannot be used to extract funds from adjacent landowners to offset the cost of such roadway service works.[3]

More recently, a 2004 case at the Ontario Superior Court of Justice outlined what considerations a municipality must have when determining when to remove a one-foot reserve. The facts in the case of *Ontario Mission of the Deaf* v. *The Corporation of the City of Barrie*[4] are summarized as follows:

The Ontario Mission of the Deaf (the "Mission") owned a large tract of land in the City of Barrie (the "City"). The Mission planned to develop the southerly piece of the land as a facility for the long-term care of the deaf, and another portion as a residential subdivision. A portion of lands north of the subdivision was to be dedicated to the City as environmentally protected property. This gave rise to a dispute between the Mission and the City. In 2003, the Ontario Municipal Board decided that there was no planning justification for connecting the approval of the facility for the deaf to dedication of the environmentally protected lands, and granted site plan approval for the long-term care facility. Along the western boundary of the site for the long-term care facility, the City had a 0.3 metre (one-foot) reserve that separated the site from access to a municipal roadway and to the municipal services beneath the road. The Mission required access over the one-foot reserve in order to construct its long-term care facility. However, after losing at the Ontario Municipal Board, the City decided to use its rights over the one-foot reserve as leverage regarding the environmentally protected lands, and refused to lift the reserve until the size of the environmentally protected

[1] *829972 Ontario Ltd.* v. *Woodstock (City)*, [1992] O.J. No. 619.
[2] *Bost Properties Inc.* v. *Highland West Developments Inc.*, [2002] O.J. No. 477 at para. 21.
[3] *Re Wasserman and City of Hamilton*, [1965] 2 O.R. 660-665.
[4] [2004] O.J. No. 1269 (hereinafter "*Ontario Mission*").

lands was settled.[5]

The Court eventually determined that the City was not allowed to use its one-foot reserve in this manner. As stated by Justice Marchand:

> "*Truly, the municipality is wrong in its position that as an 'owner' of the lands, they reserve to themselves an absolute right as to the time and place when such is to be disposed. This one foot reserve was acquired by the municipality to serve the aforementioned purpose [to ensure the orderly development of land].*
> *…*
>
> *The use of a [0.3] metre reserve is appropriate only for the purpose of ensuring that uncontrolled development which amounts to bad planning be prevented. They ought not to be used as a form of 'trump' to set aside Board decisions made on the planning merits of a case.*
>
> *In exercising discretion, a Minister of the Crown or a municipality must base any decision upon a weighing of considerations pertinent to the object of the administration. There is no such thing as: . . . absolute or untrammeled discretion, that is, action can be taken on any ground or for any reason that can be suggested to the mind of the administrator; no legislative Act can, without express language, be taken to contemplate an unlimited arbitrary power exercisable for any purpose, however capricious or irrelevant, regardless of the nature or purpose of the statute.*
>
> *I also find that as the refusal to lift the 0.3 metre reserve is not absolute, and as it must be discretionary, such exercise of discretion must be based upon proper principles and must not be influenced by extraneous irrelevant and collateral consideration.*
>
> *Even where the legislation describes the authority to be exercised as being in the decision maker's 'absolute discretion', the exercise must still be based on relevant considerations, must not be arbitrary and must be made in good faith.*
> *…*
>
> *Even where the courts have declined to order a municipality to lift a 0.3 metre reserve, the courts have acknowledged that there are limitations on a municipality's discretion in deciding whether or not to lift a reserve. Thus, the courts inquire as to whether the municipality has acted in bad faith, whether its decision is reasonable or arbitrary and whether the land owner has complied with the requirements of the municipality.*"[6]

Therefore, based on the *Ontario Mission* case and other existing case law, a municipality exercising its discretion to lift a one-foot reserve cannot make its decision in bad faith, for arbitrary reasons, or for extraneous, irrelevant, or collateral considerations that have nothing

[5] *Ibid*, at paras. 1 to 8, and case summary.
[6] *Ibid*, at paras. 17 to 21 and para. 24.

to do with relevant planning principles.

A final note is that the Ontario Municipal Board does not have jurisdiction to order a municipality to lift a one-foot reserve – this must be done through the Superior Court of Justice.[7] Practically speaking, using a one-foot reserve to frustrate a developer after a municipality loses planning arguments at the Board would likely be seen by the Court as an inappropriate attempt to set aside or frustrate the Board's decision.

One-Foot Reserves in Highland Gate

The Highland Gate property contains multiple one-foot reserves, as shown on Figures 4A and 4B. Generally, the one-foot reserves on the eastern portion of Highland Gate are at the end of stub roads that would otherwise lead onto the golf course. On the western portion of Highland Gate, the one-foot reserves lie along stretches of Timberline Trail, Cranberry Lane, and Marsh Harbour.

ALTERNATIVE(S) TO THE RECOMMENDATIONS

None.

FINANCIAL IMPLICATIONS

None.

CONCLUSIONS

One-foot reserves do exist within Highland Gate, but their use as "leverage" in any future development of the lands cannot be heavy-handed or arbitrary. The purpose of one-foot reserves as a planning tool is to enable municipalities to control access and development on the adjacent lands. The courts have ruled that a municipality exercising its discretion to lift a one-foot reserve cannot make its decision in bad faith, for arbitrary reasons, or for extraneous, irrelevant, or collateral considerations that have nothing to do with relevant planning principles.

ATTACHMENTS

Figures 1A and 1B: 1971 Aerial Photos of Highland Gate
Figures 2A and 2B: LSRCA Regulation Limit and Hydrologically Sensitive Areas

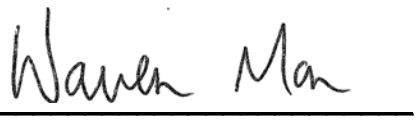
[7] *Middlesex Centre (Township) Official Plan Amendment One Foot Reserve (Re)*, [1999] O.M.B.D. No. 632 at paras. 2 and 15.

Figures 3A and 3B: Existing Subdivision Plan Overlay – Highland Gate
Figures 4A and 4B: One-Foot Reserves – Highland Gate

PRE-SUBMISSION REVIEW

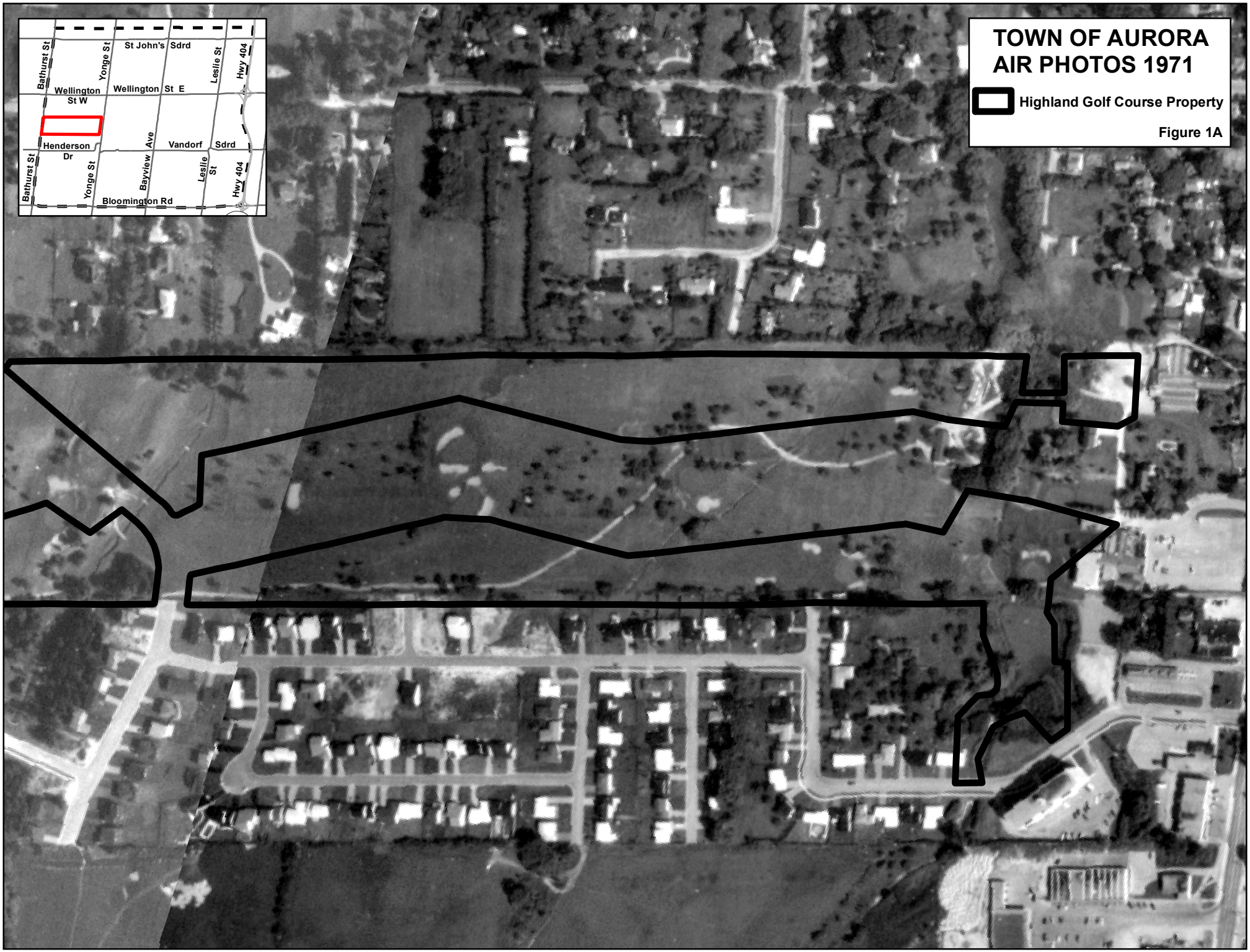
Chief Administrative Officer – January 8, 2015

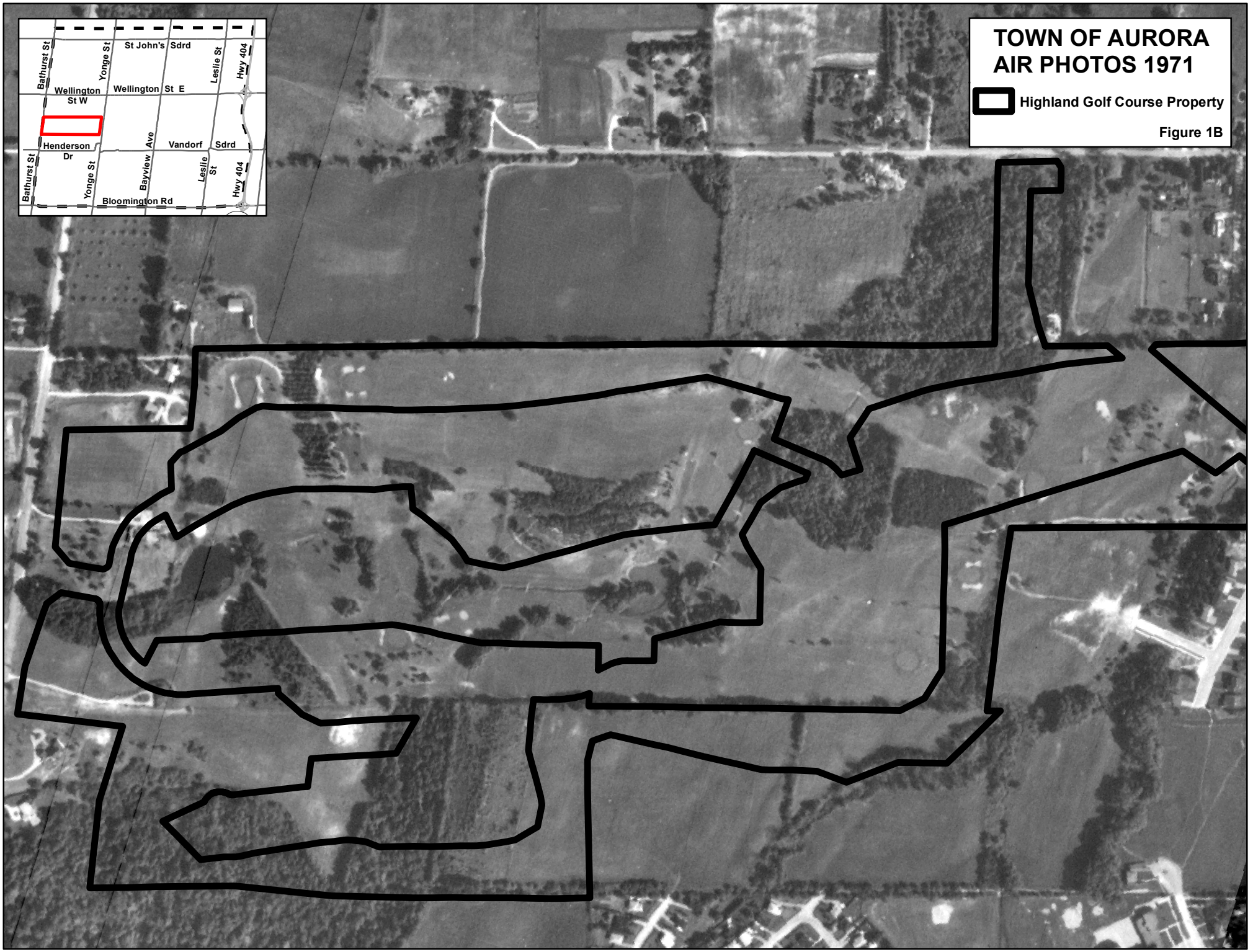
Prepared by: Warren Mar, Director of Legal & Legislative Services/Town Solicitor, ext. 4758.

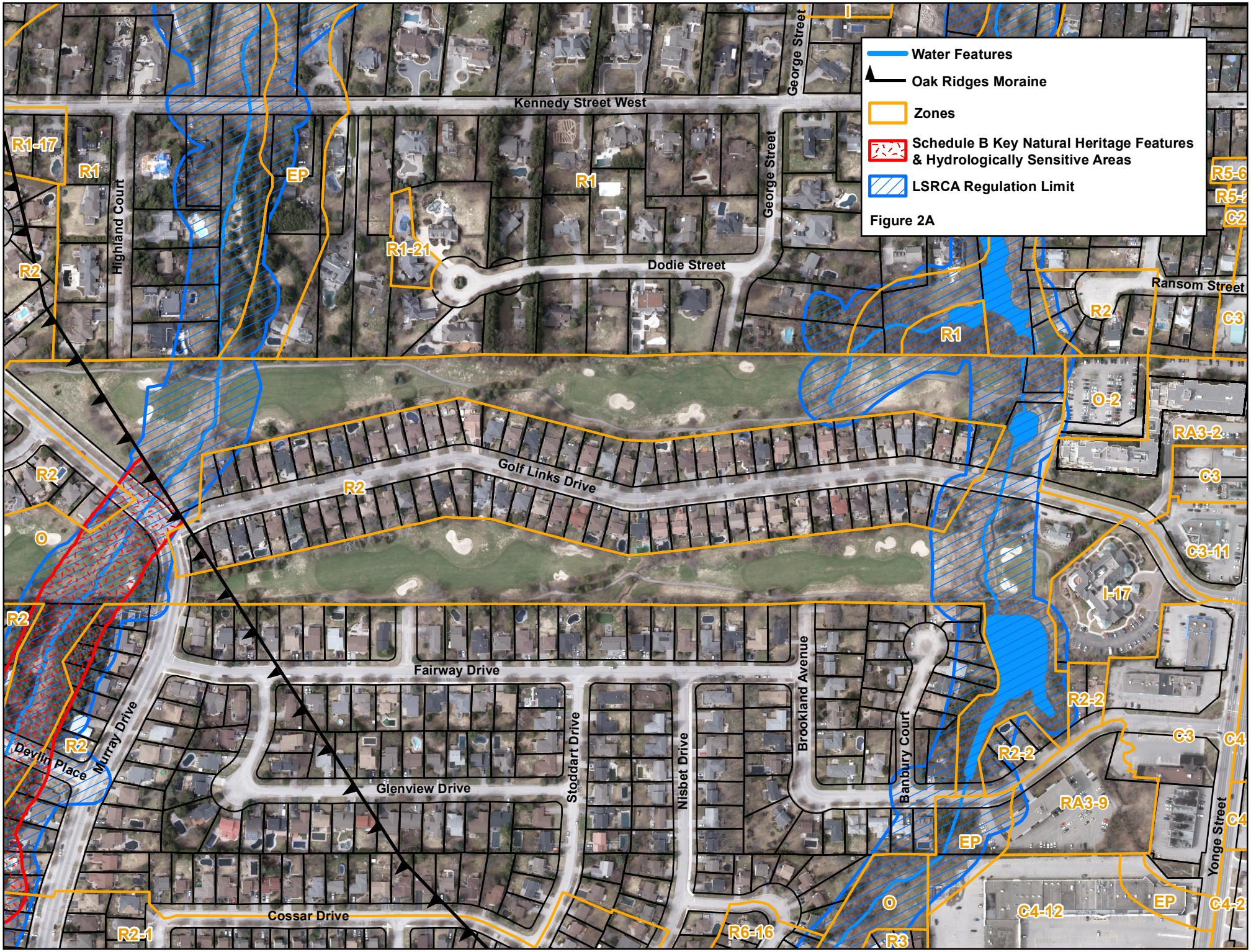


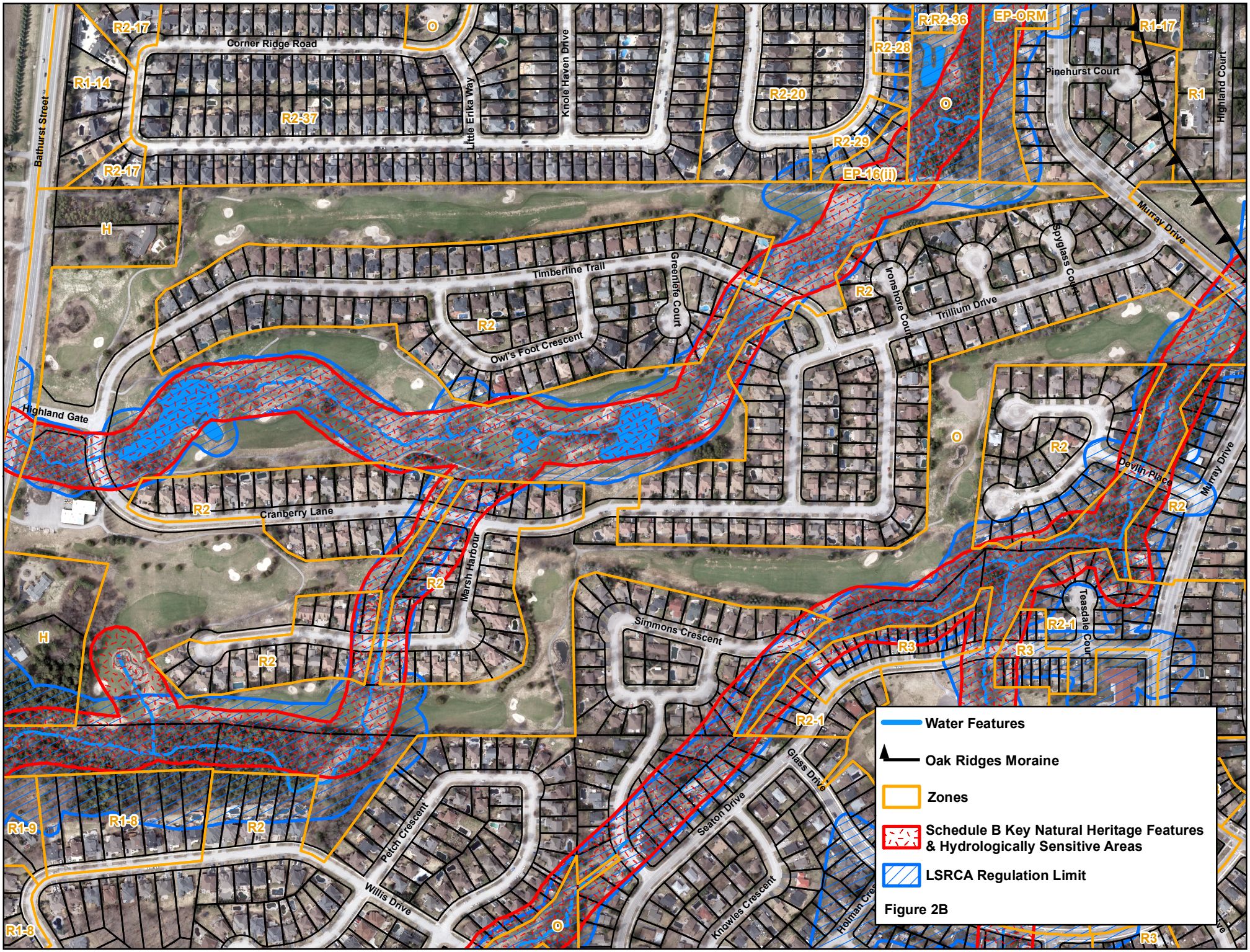
Warren Mar
Director of Legal & Legislative Services/Town Solicitor

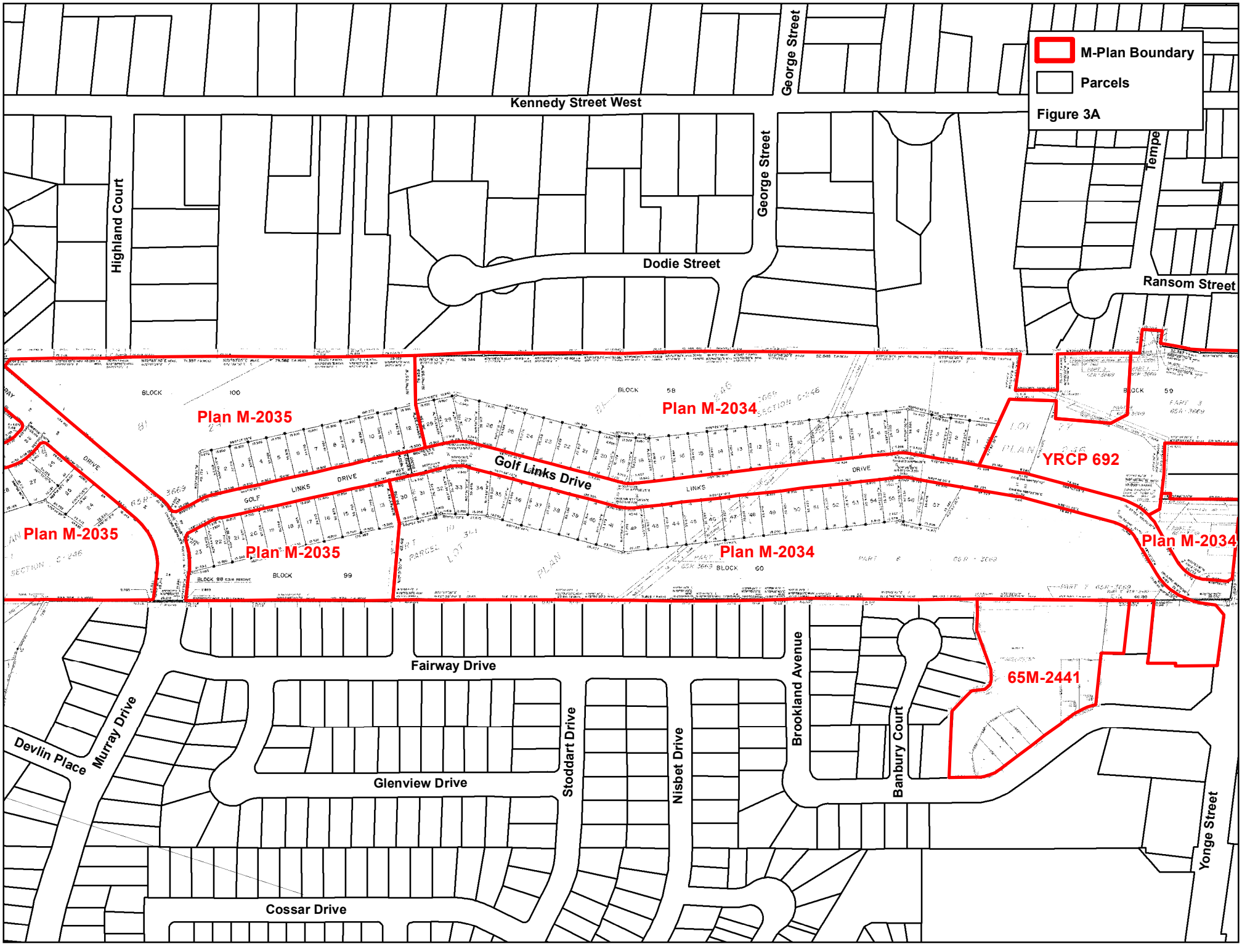
Neil Garbe
Chief Administrative Officer

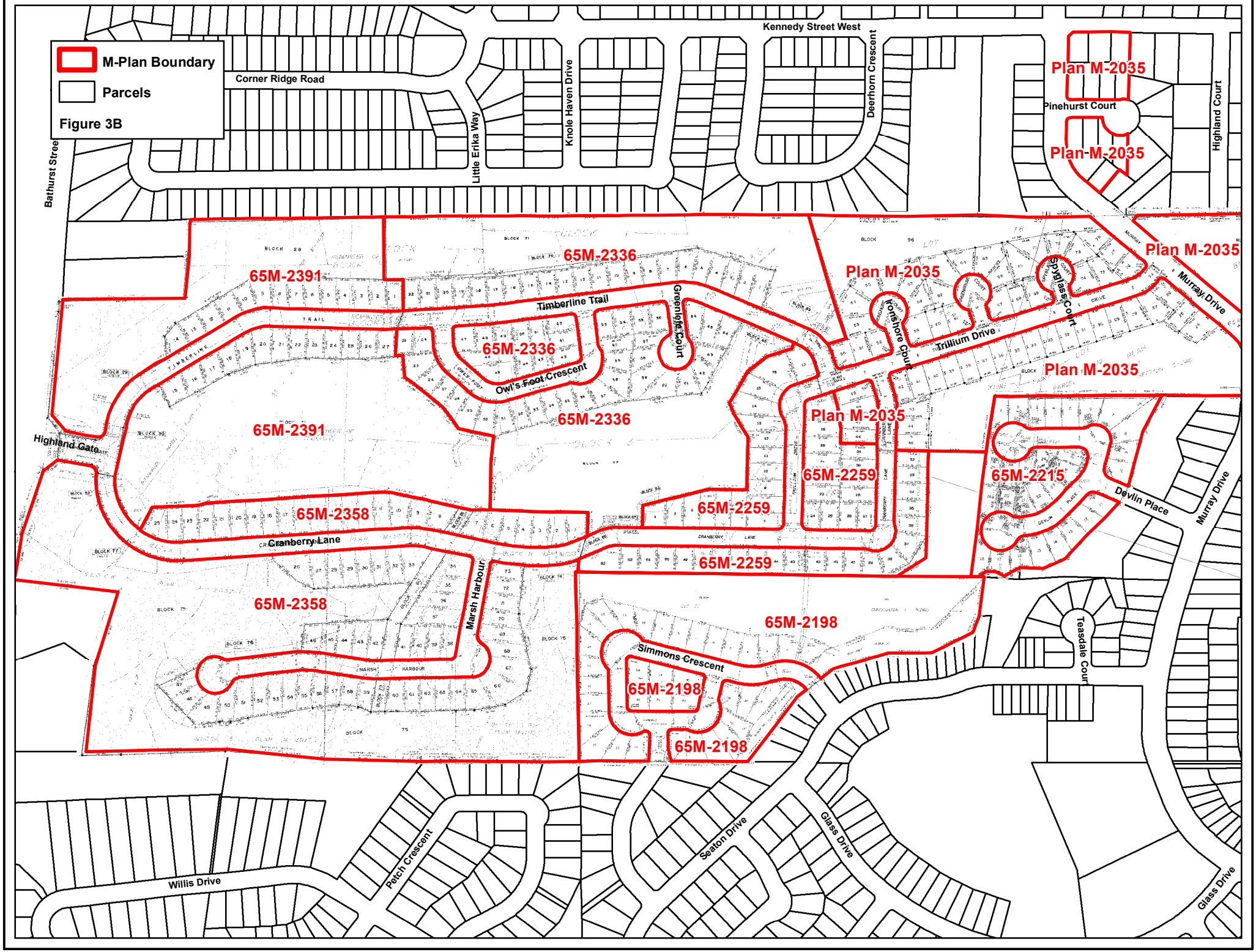

TOWN OF AURORA
AIR PHOTOS 1971
Highland Golf Course Property
Figure 1A
Bathurst St
Yonge St
St John's Sdrd
Leslie St
Hwy 404
Wellington St W
Wellington St E
Henderson Dr
Bayview Ave
Vandorf Sdrd
Bloomington Rd

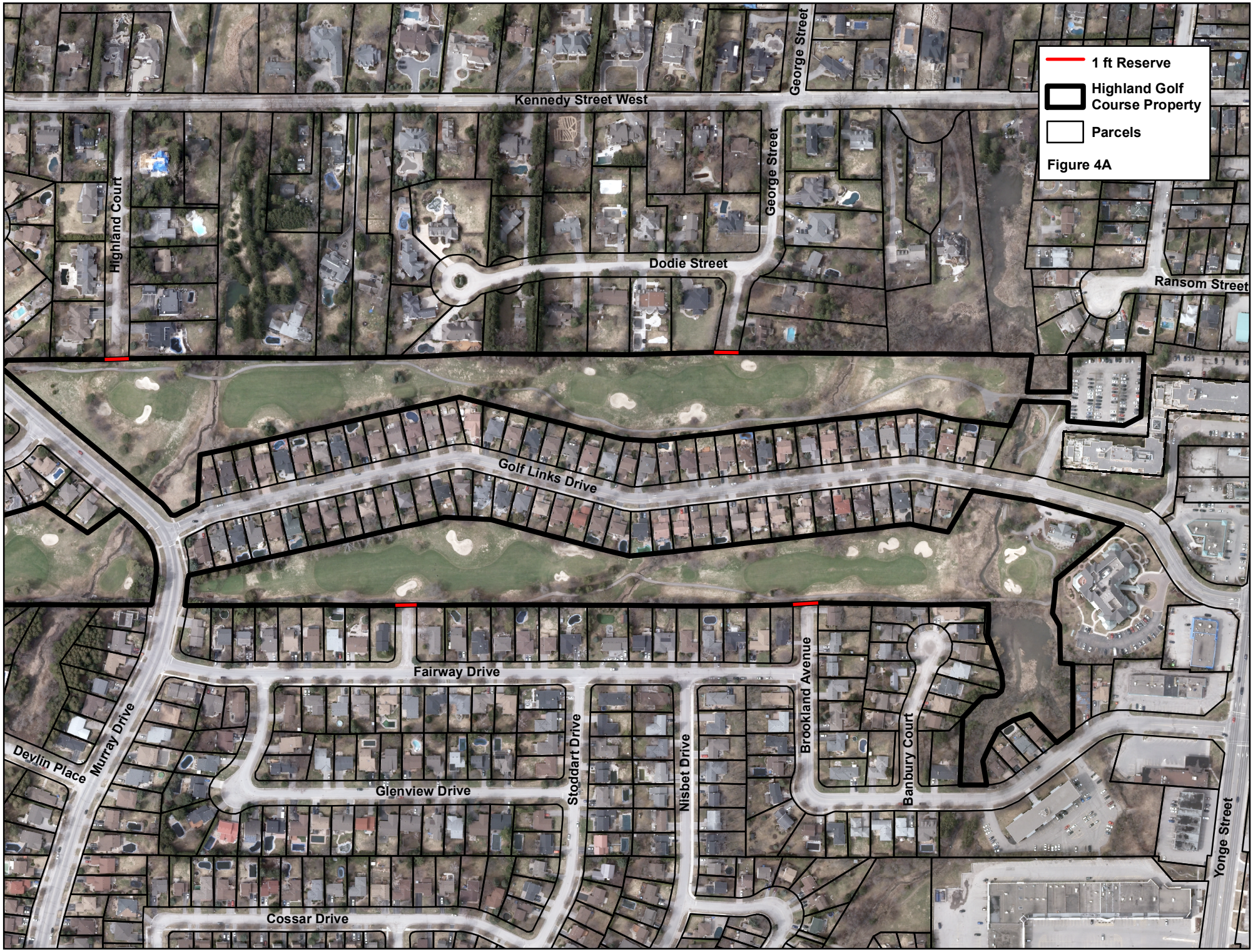

TOWN OF AURORA
AIR PHOTOS 1971
Highland Golf Course Property
Figure 1B
Bathurst St
Yonge St
St John's Sdrd
Leslie St
Hwy 404
Wellington St W
Wellington St E
Henderson Dr
Bayview Ave
Vandorf Sdrd
Bloomington Rd

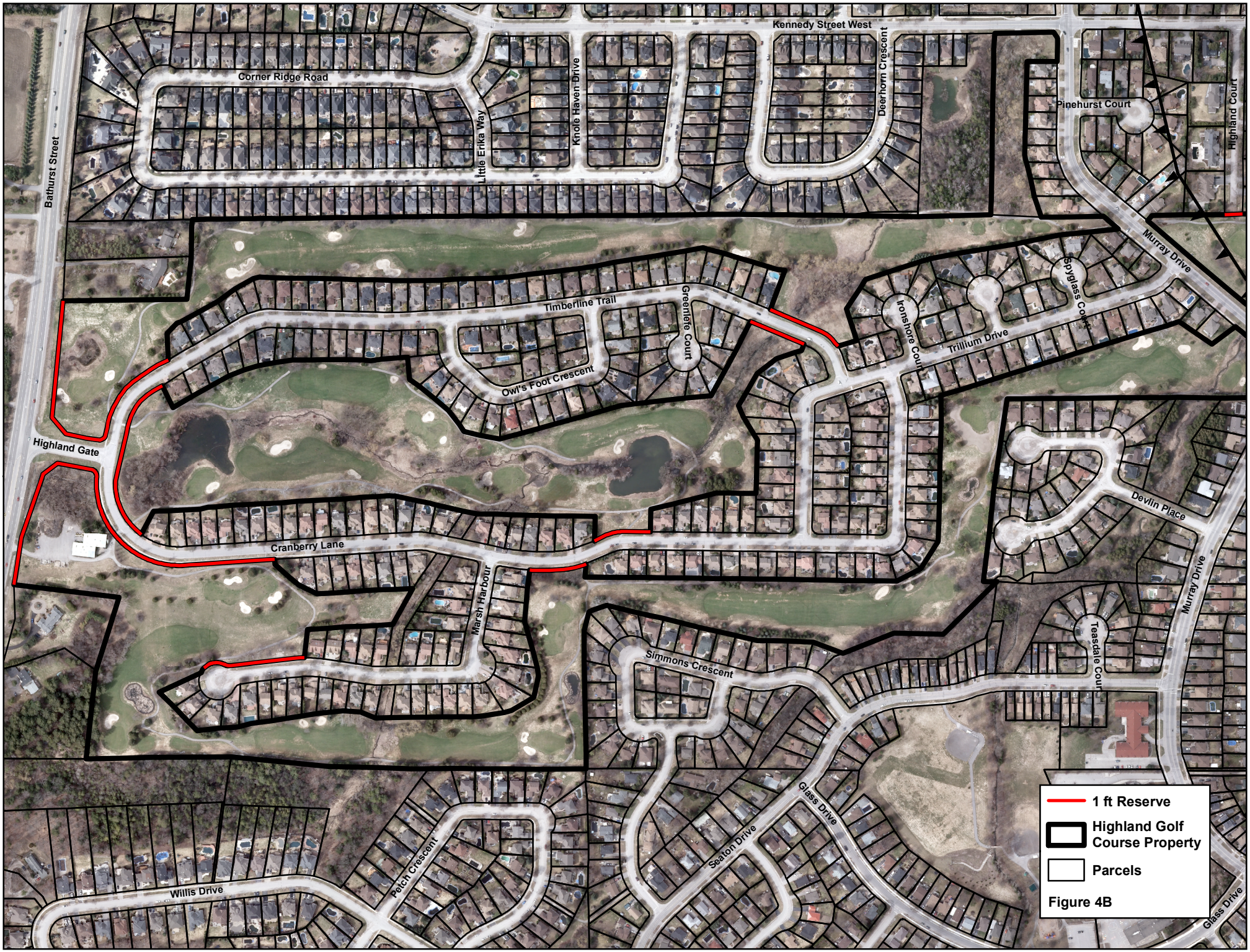

Water Features
Oak Ridges Moraine
Zones
Schedule B Key Natural Heritage Features & Hydrologically Sensitive Areas
LSRCA Regulation Limit
Figure 2A
Kennedy Street West
George Street
Highland Court
Dodie Street
Ransom Street
Golf Links Drive
Fairway Drive
Glenview Drive
Cossar Drive
Murray Drive
Devlin Place
Stoddart Drive
Nisbet Drive
Brookland Avenue
Banbury Court
Yonge Street
R1-17
R1
EP
R1-21
R2
R5-6
C2
C3
O-2
RA3-2
C3-11
I-17
R2-2
C4
RA3-9
C4-12
C4-2
R2-1
R6-16
R3
O


R2-17
Corner Ridge Road
O
R1-14
R2-37
Little Erika Way
Knole Haven Drive
R2-20
R2-28
R2-36
EP-ORM
R1-17
Pinehurst Court
R1
Highland Court
Bathurst Street
R2-17
R2-29
EP-16(ii)
H
Timberline Trail
Greenlete Court
R2
Owl's Foot Crescent
Ironshore Court
Spyglass Court
Murray Drive
Trillium Drive
Highland Gate
Cranberry Lane
Marsh Harbour
Devlin Place
Simmons Crescent
Teasdale Court
R2-1
R3
Glass Drive
Seaton Drive
Petch Crescent
Willis Drive
Knowles Crescent
R1-9
R1-8
R1-8
Water Features
Oak Ridges Moraine
Zones
Schedule B Key Natural Heritage Features & Hydrologically Sensitive Areas
LSRCA Regulation Limit
Figure 2B


M-Plan Boundary
Parcels
Figure 3A
Kennedy Street West
George Street
Highland Court
Dodie Street
Tempe
Ransom Street
Plan M-2035
Plan M-2034
YRCP 692
Golf Links Drive
Plan M-2035
Plan M-2035
Plan M-2034
Plan M-2034
Fairway Drive
65M-2441
Brookland Avenue
Banbury Court
Murray Drive
Devlin Place
Glenview Drive
Stoddart Drive
Nisbet Drive
Yonge Street
Cossar Drive


M-Plan Boundary
Parcels
Figure 3B
Kennedy Street West
Corner Ridge Road
Bathurst Street
Little Erika Way
Knole Haven Drive
Deerhorn Crescent
Highland Court
Pinehurst Court
Plan M-2035
Plan-M-2035
65M-2336
65M-2391
Timberline Trail
Greenlee Court
Owl's Foot Crescent
Plan M-2035
Spyglass Court
Murray Drive
Trillium Drive
Lorrshore Court
Highland Gate
65M-2259
65M-2215
Devlin Place
65M-2358
Cranberry Lane
Marsh Harbour
65M-2198
Simmons Crescent
Teasdale Court
Willis Drive
Petch Crescent
Seaton Drive
Glass Drive


1 ft Reserve
Highland Golf Course Property
Parcels
Figure 4A
Kennedy Street West
George Street
George Street
Highland Court
Dodie Street
Ransom Street
Golf Links Drive
Fairway Drive
Brookland Avenue
Banbury Court
Yonge Street
Devlin Place
Murray Drive
Glenview Drive
Stoddart Drive
Nisbet Drive
Cossar Drive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Owl's Foot Crescent
Ironshore Court
Spyglass Court
Trillium Drive
Highland Gate
Devlin Place
Cranberry Lane
Marsh Harbour
Simmons Crescent
Teasdale Court
Murray Drive
Glass Drive
Seaton Drive
Petch Crescent
Willis Drive
Glass Drive
1 ft Reserve
Highland Golf Course Property
Parcels
Figure 4B