



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

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

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

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## **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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

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*<sup>4</sup> 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

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<sup>1</sup> 829972 *Ontario Ltd. v. Woodstock (City)*, [1992] O.J. No. 619.

<sup>2</sup> *Bost Properties Inc. v. Highland West Developments Inc.*, [2002] O.J. No. 477 at para. 21.

<sup>3</sup> *Re Wasserman and City of Hamilton*, [1965] 2 O.R. 660-665.

<sup>4</sup> [2004] O.J. No. 1269 (hereinafter "*Ontario Mission*").

lands was settled.<sup>5</sup>

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 untrammelled 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.”<sup>6</sup>*

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

<sup>5</sup> *Ibid*, at paras. 1 to 8, and case summary.

<sup>6</sup> *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.<sup>7</sup> 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

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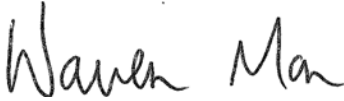
<sup>7</sup> *Middlesex Centre (Township) Official Plan Amendment One Foot Reserve (Re)*, [1999] O.M.B.D. No. 632 at paras. 2 and 15.

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.***



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



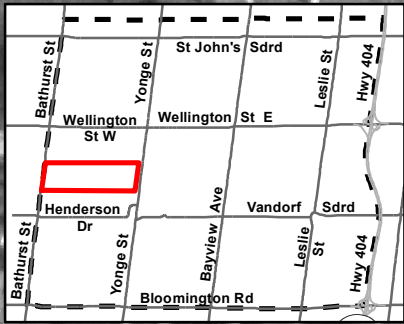
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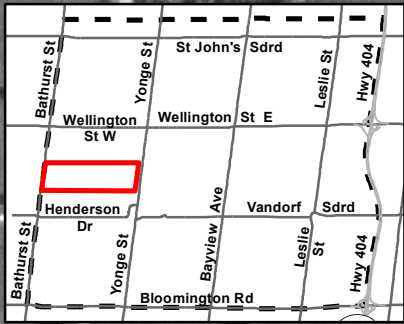
**Neil Garbe**  
**Chief Administrative Officer**

# TOWN OF AURORA AIR PHOTOS 1971

 Highland Golf Course Property

Figure 1A





**TOWN OF AURORA  
AIR PHOTOS 1971**


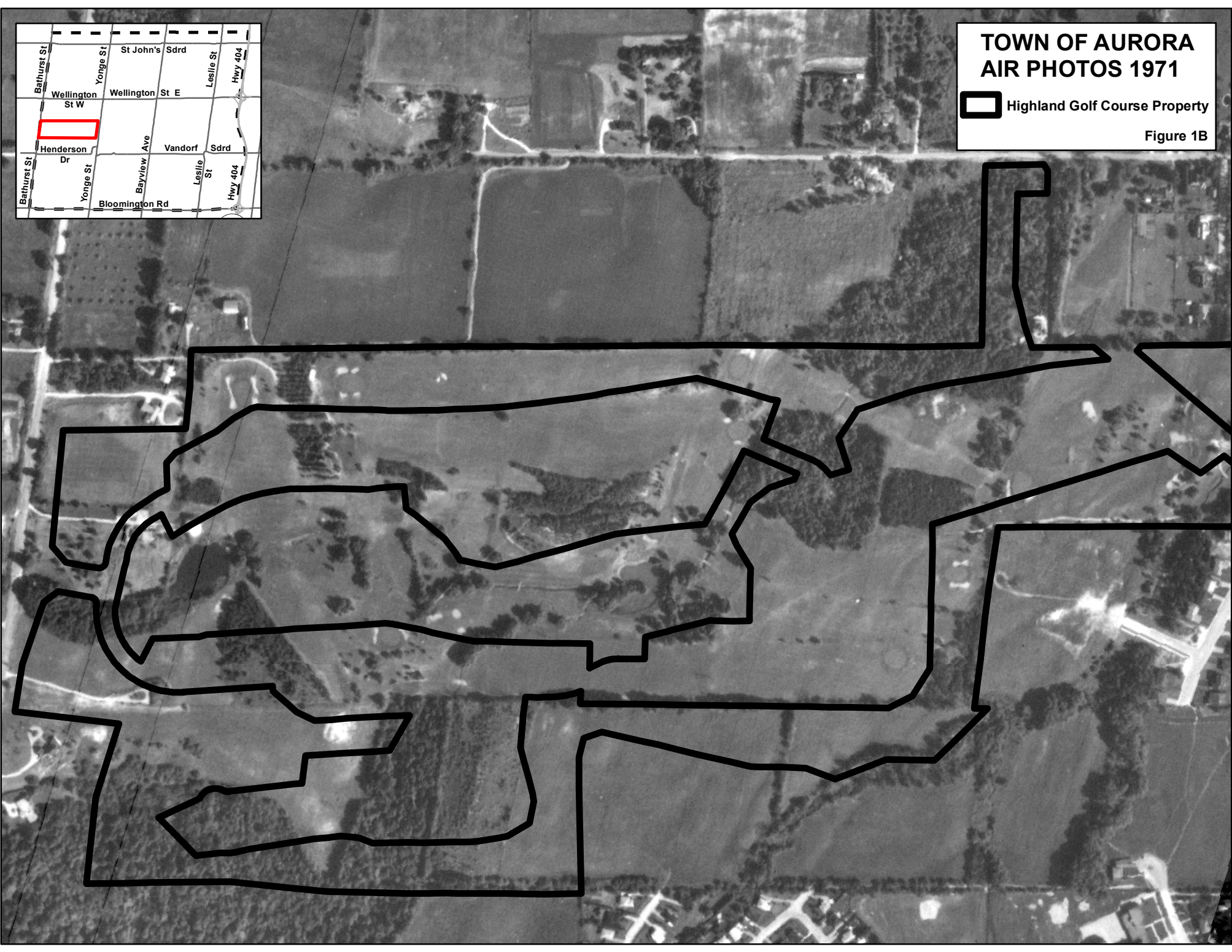
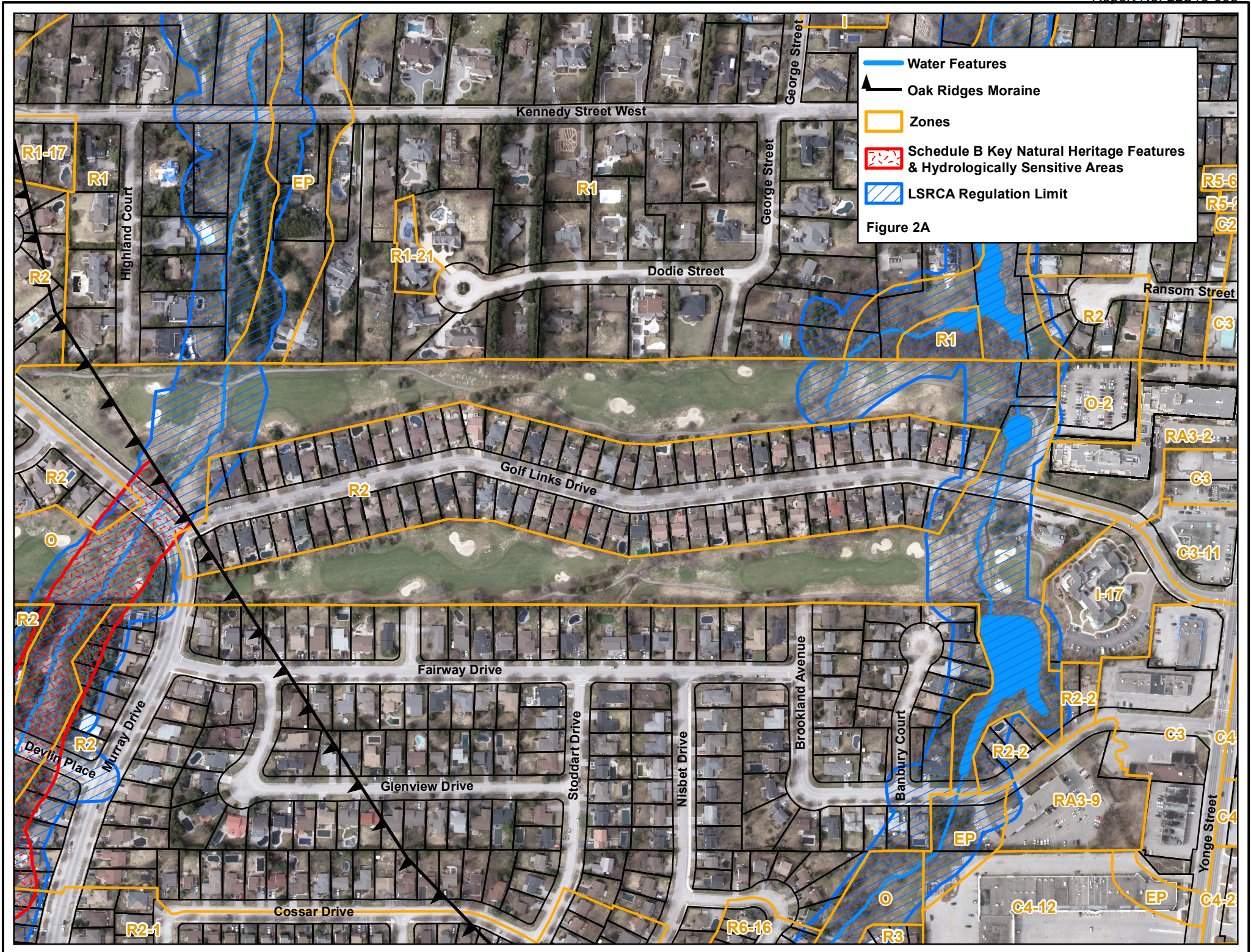
 Highland Golf Course Property

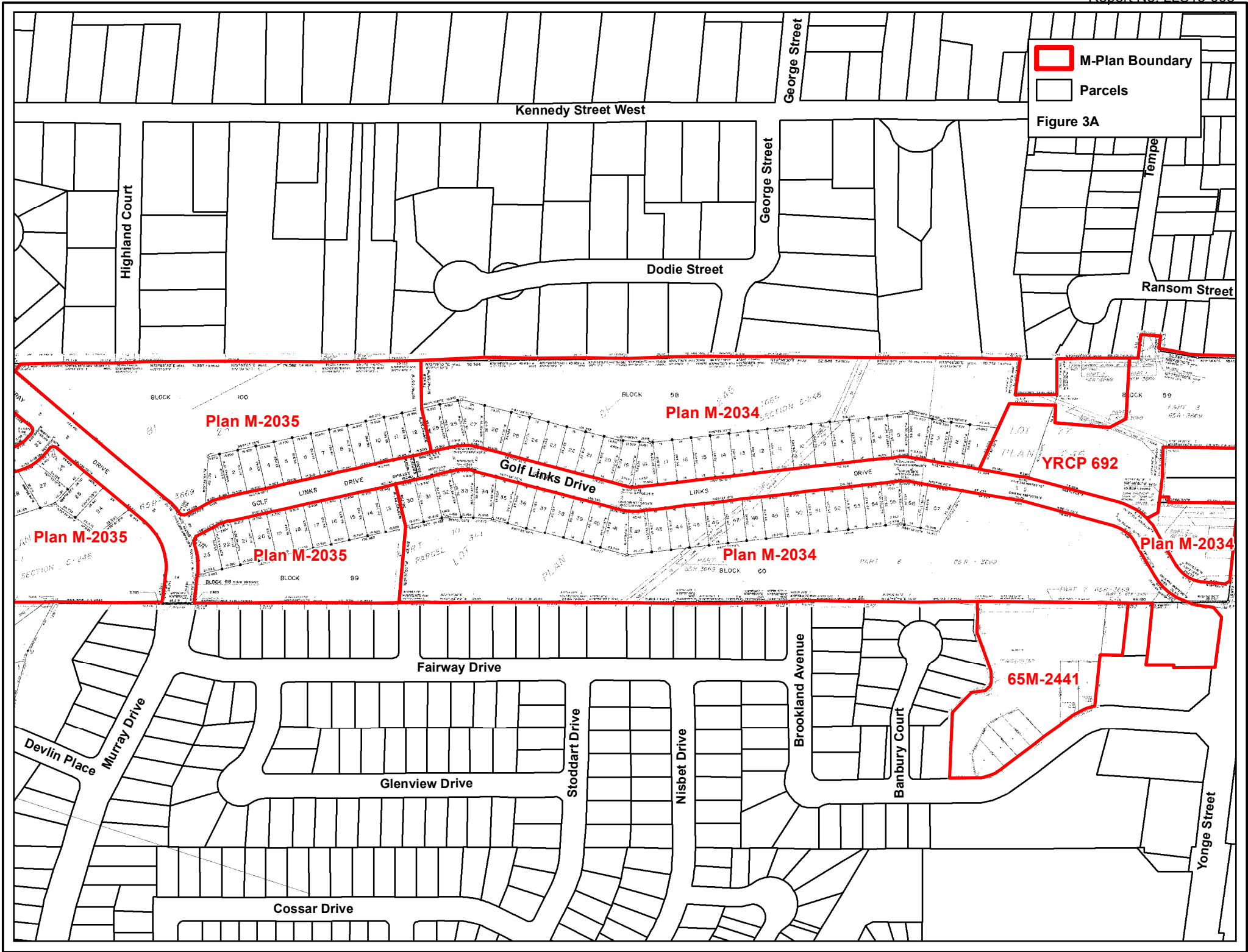
Figure 1B













 M-Plan Boundary  
 Parcels

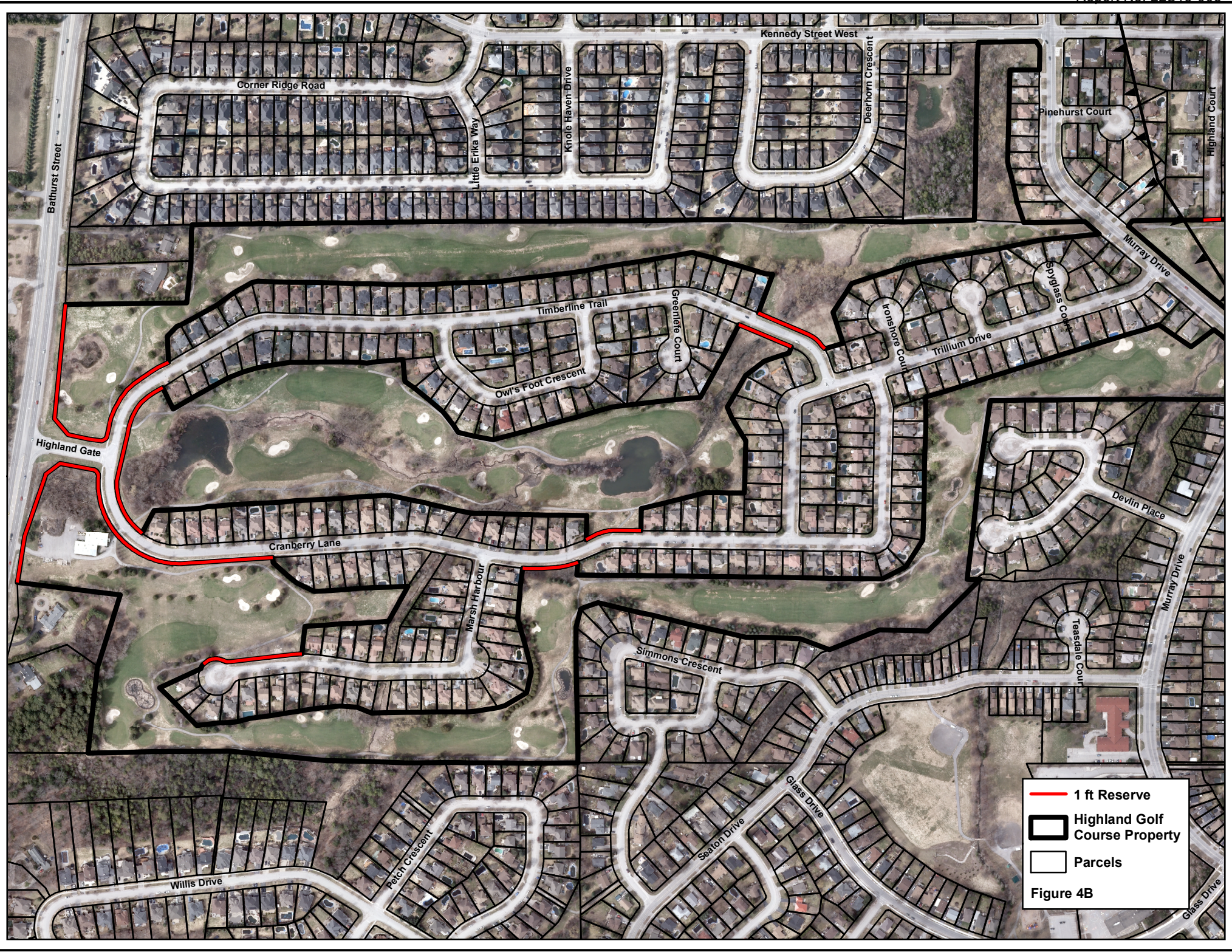
Figure 3A





**1 ft Reserve**  
**Highland Golf Course Property**  
**Parcels**

Figure 4A



**1 ft Reserve**

**Highland Golf Course Property**

**Parcels**

**Figure 4B**