CITATION: *Cedarhill Golf Entreprises Inc. v The City of Ottawa*, 2024 ONSC 1946
COURT FILE NO.: CV-21-00085810-0000
DATE: April 2, 2024

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
CEDARHILL GOLF ENTERPRISES INC.	)	
	)	
	)	
Applicant	)	*Michael S. Polowin*, for the Applicant
	)	
	)	
– and –	)	
	)	
THE CITY OF OTTAWA	)	
	)	
Respondent	)	*Kristen Crain*, for the Respondent
	)	
	)	
	)	
	)	

REASONS FOR DECISION

ABRAMS J.

Introduction

[1] The applicant, Cedarhill Golf Enterprises Inc. ("Cedarhill") requests a declaration that Schedule Y5 ("Y5") of a subdivision agreement (the "subdivision agreement") registered on title to its property (the "property") is *ultra vires*, invalid, and unenforceable. The specific obligation in Y5 that Cedarhill opposes mandates the continued operation of a golf course on the property in perpetuity.

[2] The respondent, City of Ottawa (the "City"), contends that the subdivision agreement, including Y5, is enforceable against Cedarhill and the property to which it applies, just like any other subdivision agreement in the province of Ontario.

Brief Background

[3] On May 5, 1980, Cedpar Properties Inc. ("Cedpar"), the then-owner of the property and additional lands, entered into the subdivision agreement with the Township of Nepean ("Nepean"), which was registered on title to the property and surrounding lands.

[4] Cedarhill is the successor in title to Cedpar, having acquired the property on June 19, 1981.

[5] Cedarhill owns the property known municipally as 56 Cedarhill Drive, Ottawa, on which the golf course currently operates.

[6] The City is the successor to Nepean through an amalgamation in 2001.

[7] Cedarhill contends that subdivision agreements are planning instruments, rather than commercial contracts. To that end, it argues that the effect of Y5 is to hold it responsible in perpetuity for the financial burden of operating an unprofitable golf course for the City's benefit. This is despite the availability of other appropriate and reasonable uses of the property, which would constitute good planning.

[8] The City asserts that a subdivision agreement is a contract and is to be interpreted according to normal principles of contractual interpretation. Thus, the City argues that Cedarhill seeks the court's assistance to deprive it of its ability to enforce Y5, because Cedarhill now considers it more advantageous to re-develop the golf course.

Issues

[9] The issues to be determined on this application are as follows:

1. Whether Nepean had the statutory authority to enter into the subdivision agreement, including Y5, with Cedpar in 1980.

2. Whether the subdivision agreement is enforceable as a contract. Alternatively, is it a planning instrument that should remain open to changes in law and policy.
3. Whether the subdivision agreement binds Cedarhill as a successor in title.
4. Whether Y5 creates contingent interests in land.
5. Whether Y5 amounts to a constructive taking.

Evidence

[10] At the time of execution of the subdivision agreement, subdivision control and the approval of plans of subdivision were governed by *The Planning Act*, R.S.O. 1970, c. 349, as amended (the "*1970 Planning Act*").[1] The process of obtaining approval to register a plan of subdivision in 1980 was similar to the current process.

[11] An applicant would submit an application for approval of a draft plan of subdivision (a "draft plan") for review by the relevant approval authority.[2] That approval authority was permitted to impose conditions on the approval of the draft plan.[3] The statute provided that either a municipality or an approval authority could enter into agreements with the owner "imposed as a condition to the approval of a plan of subdivision".[4]

[12] If an owner was not satisfied with any of the imposed conditions, including the terms of an agreement imposed as a condition of approval, it could refer the matter to what was then the Ontario Municipal Board (the "OMB") at any time before the draft plan was finally approved.[5] The final approval of a draft plan for registration would occur once the approval authority was satisfied that the conditions "have been or will be fulfilled".[6]

[13] In 1980, the Regional Municipality of Ottawa-Carleton (the "Region") was the approval authority for Cedpar's subdivision plan. Historical records demonstrate, however, that Nepean, as the local municipality where the subdivision lands were located, was involved throughout the

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[1] See *1970 Planning Act*, s. 29(2)(a).
[2] *1970 Planning Act*, ss. 33(1), 33(3)-(4).
[3] *1970 Planning Act*, s. 33(5).
[4] *1970 Planning Act*, s. 33(6).
[5] *1970 Planning Act*, s. 33(7).
[6] *1970 Planning Act*, s. 33(14).

multi-year process of reviewing Cedpar's development application, including developing conditions of draft plan approval and negotiating the terms of the subdivision agreement to be entered into by Nepean and Cedpar as a condition of approval.

[14] In 1974, Cedpar proposed the development of estate lots surrounding an existing golf course in a draft plan of subdivision including approximately 100 residential lots and the golf course lands. As early as October 17, 1974, Nepean's Planning Board emphasized that the retention of the existing golf course was of "utmost importance", and "final approval [of the proposed development] will be subject to a satisfactory resolution to the golf course retention."

[15] On October 28, 1974, Nepean's Council passed a resolution approving Cedpar's conceptual plan for the proposed subdivision, subject to resolution of issues including "the legal methods required to ensure the continued operation of the golf course."

[16] On November 10, 1977, Nepean's Planning Board again reviewed Cedpar's proposed plan of subdivision. Cedpar's representative in attendance advised the Planning Board that "the owners were agreeable to keeping the golf course in perpetuity." The minutes state the following:

> Reeve Haydon stated that he personally was not prepared to consider approval of the development unless the continued existence of the golf course was guaranteed. [Cedpar's representative] replied that there was no conflict in this regard.

[17] The Planning Board then voted to support the proposed plan of subdivision, subject to the resolution of three matters to Nepean's satisfaction, including "retention of the golf course."

[18] On March 16, 1978, Nepean's Planning Board supported Cedpar's updated development concept, for "103 lots clustered around the golf course", and moved to submit the revised plans with Nepean's comments to the Region. The minutes state that Nepean's solicitor was to be contacted regarding "the best means of ensuring that the golf course is retained in perpetuity."

[19] On August 17, 1978, Nepean's Planning Board considered and made revisions to proposed conditions of final plan approval and moved for those revised conditions to be submitted to the Region. The City's archives include a document titled "Township of Nepean Conditions - Final Plan Approval - Cedarhill Properties Inc. - 06T - 75509", which includes handwritten annotations that appear to state "Revised as per Planning Board August 17, 1978". The fifth condition in that

document requires "[t]hat the Owner enter into an agreement with the Township of Nepean to ensure the operation of the golf course in perpetuity to the satisfaction of the Township of Nepean".

[20] The City is unable to confirm if this document represents the final version of the conditions of approval required of Cedpar,[7] however, minutes from a subsequent Planning Board meeting corroborate that "it was a condition of draft plan approval that the matter of the permanent retention of the golf course be resolved to the City's satisfaction."

[21] On August 29, 1978, the Region's Planning Committee considered Cedpar's subdivision application and moved that it be approved, as amended.

[22] On December 13, 1979, Nepean's Planning Board was provided a draft agreement that had been prepared by Cedpar's solicitor, which remained subject to review by the City's solicitor.

[23] On January 10, 1980, Nepean's Council held a special meeting for the purpose of considering "the acceptance of a special schedule to the subdivision agreement for the Cedarhill Subdivision for the purpose of ensuring the continued use of the golf course lands". For the stated purpose of expediting the process, at that meeting Council authorized the Mayor and Clerk to execute the subdivision agreement incorporating said special schedule on behalf of Nepean, subject to any revisions recommended by the City's solicitor.

[24] On March 19, 1980, Cedpar and Nepean signed the subdivision agreement, and thereafter the Subdivision Plan was registered as Plan 4M-278.

[25] On May 15, 1980, the subdivision agreement was registered on title to all the lands forming part of the Subdivision Plan, including the golf course lands, as Instrument LT233955. The subdivision agreement specifies the following:

(a) All of the Schedules, including Y5 (Special Provisions for Cedarhill Golf Course), are "an integral part of the Agreement";[8]

[7] This is due to the dates identified in the document as compared to the registered Subdivision Plan. Clause 1 of the document states: "That approval applies to the attached draft plan of subdivision certified by George D. Annis, O.L.S. dated September 2, 1975 and as revised on May 20, 1977 and April 14, 1978", whereas the Subdivision Plan is dated July 10, 1979.

[8] Subdivision agreement, cl. 2.

(b) It is binding upon the parties and all their successors and assigns;[9] and

(c) All covenants and agreements "assumed by or imposed upon the owner are deemed to be covenants which run with and bind the lands [t]herein described".[10]

[26] Cedpar had the statutory right to challenge any conditions of approval, including the terms of Y5, to the OMB pursuant to s. 33(7) of the *1970 Planning Act*. It did not do so. As indicated in Nepean's Planning Committee minutes, Cedpar was "agreeable to keeping the golf course in perpetuity".

[27] On June 19, 1981, Cedarhill acquired the golf course lands for $1. Since that time, Cedarhill has complied with the subdivision agreement and has operated the Cedarhill Golf and Country Club, a private members' golf course, on the golf course lands.

[28] The stated intention of Y5 is to enable Nepean "to act, if necessary" to ensure the "continue[d] operation of 'the golf course lands' as a golf course operation or for such other suitable recreational use as may exist from time to time."[11] Clause 1 of Y5 confirms the owner's obligation is to "at all times operate the golf course in a good and businesslike manner to a standard reasonably comparable to the current standard of operation of the golf course."

[29] That provision also grants the City a "step-in" remedy, should the owner fail to operate the golf course in such a manner. The remedy relies on the license, granted in the first paragraph of Y5, to enter specified parts of the golf course lands "for the purpose of operating and maintaining the said golf course" (the "License"). Both are defined terms in Y5:

> a) "operate" […] – to organize, supervise and regulate the use of the golf course inclusive of the establishment and collection of fees for the playing of golf,
>
> b) "maintain" […] – to organize, supervise and regulate the repair and the keeping up of the golf course in a satisfactory state for the playing of golf together with the correction and rectification of deficiencies as hereinafter defined.

[9] Subdivision agreement, cl. 70.
[10] Subdivision agreement, cl. 70.
[11] Y5, Preamble.

[30] The License is limited to entering and occupying "any and all fairways, tees and greens, parking lot, pro shop and golf club storage shop, and maintenance sheds". Y5 excludes "club house lands, club house proper, pool, driving range, and adjacent grounds and patios" from the License.[12]

[31] Clause 1 requires the City to deliver notice of potential deficiencies and provides a 30-day cure period in favour of the owner, failing which the City "shall be free to enter the golf course lands described above as a licensee, and to correct and rectify the deficiencies and to operate a golf course in order to permit the continued playing of the game of golf." The step-in remedy continues until the default is cured.

[32] Clause 1 specifies that the City is to have "exclusive possession" of the identified portions of the golf course lands for the purpose of operating the golf course while exercising the License. The purpose of this specification is further clarified within cl. 2, which confirms that while in default, Cedarhill "shall not have the right to participate in any way in the golf course operation or to participate in any way in the use of the golf course lands during the golf season".

[33] According to cl. 4, these same provisions operate if the owner voluntarily elects to notify the City of its intent to abandon the maintenance of the golf course.

[34] Y5 does not contemplate the conveyance of the golf course lands to the City.

[35] Conspicuously, the parties expressly contemplated a scenario where "the continuing operation of the lands for the purpose of playing golf is not commercially viable".[13] As set out in cl. 3, the parties agreed that where the City exercises its right to operate and maintain the golf course, and determines continued golf course operations is not commercially viable, the City could "effect a change of use of the lands", provided the following:

> a) The proposed use maintains the subject lands as open space and complies with the zoning by-law then in force; and
>
> b) written notice is given of the City's intention to change the use to the owner and all mortgagees setting out specifically the use proposed by the City; and

[12] Y5, Preamble.
[13] Y5, cl. 3.

> c) sixty days have elapsed from the date of service of the Notice without the owner or a mortgagee curing its default hereunder.

[36] Having received notice of an intended change of use, Cedarhill or any mortgagee could opt to resume the maintenance of the golf course or, in the alternative, pay any outstanding operation and maintenance charges and taxes and furnish an undertaking to the City to operate the lands in accordance with the proposed changed use. In the latter scenario, the City would be obliged to release Cedarhill from any golf-related obligations in the agreement and vacate the lands.

[37] Finally, cl. 8 identifies that Y5 may be amended or altered by Cedarhill and the City "as they may agree". This provides an alternative mechanism by which Cedarhill could stop operating a golf course, with the City's agreement.[14]

Analysis

Did Nepean have the statutory authority to enter into the subdivision agreement, including Y5, with Cedpar in 1980?

[38] Cedarhill argues that the subdivision agreement is an *ultra vires* attempt by the City (initially Nepean) to circumvent the limitation on the amount of land that can be dedicated for a public recreational purpose through a subdivision agreement. To that end, Cedarhill asserts that Y5 is *de facto* a dedication of land for a park or public recreational purpose. Although there has been no conveyance of land to the City, the subdivision agreement operates on the threat of exclusive possession of the golf course by the City if Cedarhill does not continue to operate a golf course to the City's standards. It also stipulates that all costs of operation incurred by the City, if it takes possession of the golf course, are collectable against Cedarhill. In this way, Cedarhill argues that Nepean did not have the statutory authority to enter into the subdivision agreement, including Y5, with Cedpar in 1980. I see no merit in this argument.

[14] The clause specifies that "no concurrence therein shall be required of anyone save and except any mortgagees".

[39] Nepean had the statutory authority to execute the subdivision agreement on March 19, 1980, pursuant to s. 33(6) of the *1970 Planning Act*. That statute expressly authorized municipalities to enter into agreements as a condition to the approval of a draft plan:

> Subdivision agreements
>
> 33(6) Every municipality and the Minister may enter into agreements imposed as a condition to the approval of a plan of subdivision and any such agreement may be registered against the land to which it applies and the municipality or the Minister, as the case may be, shall be entitled to enforce the provisions thereof against the owner and, subject to the provisions of *The Registry Act* and *The Land Titles Act*, any and all subsequent owners of the land.

[40] The Supreme Court of Canada has recognized that the *Planning Act* grants a municipality the statutory authority to enter into subdivision agreements.[15] The Ontario Court of Appeal implicitly affirmed this authority is contained within the *1970 Planning Act*, specifically.[16]

[41] The City argues that subdivision agreements are of fundamental importance to this Province's land planning process. I agree. By requiring a developer to submit to the law of contract, subdivision agreements give municipalities an enforceable mechanism for ensuring compliance with conditions of approval following registration of a plan of subdivision.[17] Such mechanisms are the necessary corollary to provisions of the *1970 Planning Act* which permit the approval of a draft

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[15] *Beaver Valley Developments Ltd. v. Township of North York and Dominion Insurance Corp.* (1961), 28 D.L.R. (2d) 76 (S.C.C.), at p. 79, *per* Locke J. ("I agree with the learned trial Judge that the power of the township to enter into such an agreement was undoubted"). See the Court of Appeal's decision in 23 D.L.R. (2d) 341 (Ont. C.A.) for the relevant provision (s. 4(3)) of then-existing *Planning Act*.

[16] *314164 Ontario Ltd. v. Sudbury (City)* (1983), 43 O.R. (2d) 225 (C.A.). Lower court's decision found at 36 O.R. (2d) 592 (S.C.).

[17] John Mascarin & Paul De Francesca, *Annotated Land Development Agreements* (Toronto: Carswell, 2001) (loose-leaf updated 2024, release 1) at § 1:11, 2.1.

plan where the Minister is satisfied that "the conditions of approval have been or will be fulfilled" in the future.[18]

[42] Importantly, developers are not without a remedy in circumstances where they believe municipalities are overreaching by seeking to impose unreasonable conditions of subdivision approval, including through subdivision agreements. They can appeal to the specialized tribunal (formerly the OMB, now the Ontario Land Tribunal) at any time before a draft plan is finally approved.[19] However, once a developer enters into a subdivision agreement, the law of contract governs and it is no longer possible to challenge such an agreement on the basis that it goes beyond what a municipality may be entitled to impose as a condition of approval. As observed by the Supreme Court of Canada in *Pacific National Investments Ltd. v. Victoria (City)*:

> In many cases, no doubt, municipalities make demands that are not strictly authorized and developers do what they are asked to do because in the end they get the [planning] they want. There is no suggestion that in the ordinary case such arrangements should be unwound […].[20]

[43] In response to Cedarhill's specific claim that Y5 is *de facto* a dedication of land for a park or public recreational purpose in excess of 5 percent, I note that in *Laurentian Heights Ltd., Re,* the OMB dealt with an appeal against a condition of approval that would have required the dedication of 38 percent of the lands in a subdivision as parkland, prior to the final approval and registration of the plan of subdivision. The OMB held that "while the *Act* specifies that a 5% parkland dedication may be imposed by an approval authority, there is nothing to preclude the parties from agreeing to additional parkland dedication which is the case here."[21]

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[18] *1970 Planning Act*, s. 33(14).
[19] *1970 Planning Act*, s. 33(7).
[20] 2004 SCC 75, [2004] 3 S.C.R. 575, at para. 32.
[21] 2012 CarswellOnt 8321 (O.M.B.), at paras. 1, 32, 36.

Is the subdivision agreement enforceable as a contract? Alternatively, is it a planning instrument that should remain open to changes in law and policy?

[44] Cedarhill asserts that "[s]ubdivision agreements are planning instruments, rather than standard commercial contracts," such that "subdivision agreements should remain open to changes in law and policy." I do not agree.

[45] First, apart from arguing by analogy that subdivision agreements and site plan agreements should be viewed similarly, Cedarhill cites no authority that subdivision plans should be "treated in a comparable manner under the law." Second, this court has repeatedly concluded that a subdivision agreement is a contract and is to be interpreted according to normal principles of contractual interpretation.[22] As Goldstein J. said in *Caledon (Town) v. Waterstone Properties Corp.*, "Ultimately, the normal principles of contractual interpretation must apply. A subdivision agreement is a contract and will be interpreted according to contractual principles".[23]

Does the subdivision agreement bind Cedarhill as a successor in title?

[46] Cedarhill argues that because Y5 contains positive obligations, at common law it is not enforceable against it as a successor in title to the golf course lands.

[47] The nature of subdivision agreements is such that many if not most of the covenants are positive obligations. Moreover, there are a number of statutory exceptions to the rule that positive covenants do not bind successors in title. The Ontario Court of Appeal has found that s. 51(26) of the current *Planning Act*[24] is a specific statutory exception to the common law rule that positive covenants do not bind successors in title.[25] In this case, Y5 has been registered on title to the golf course lands and, by operation of statute, it is therefore, in my view, binding on any and all

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[22] *Caledon (Town) v. Waterstone Properties Corp*., 2016 ONSC 5394, 57 M.P.L.R. (5th) 183, at paras. 27, 51; aff'd 2017 ONCA 623, at paras. 18-19. See also *DiBattista Developments v. City of Brampton*, 2017 ONSC 6178, 70 M.P.L.R. (5th) 165, at para. 69; *Tandi Construction Ltd. v. Flamborough (Town)* (2005), 13 M.P.L.R. (4th) 278 (Ont. S.C.), at paras. 69-70.

[23] *Caledon*, at para. 27, citing *Tandi Construction*, at para. 69.

[24] R.S.O. 1990, c. P.13.

[25] *Amberwood Investments Ltd. v. Durham Condominium Corp. No. 123* (2002), 58 O.R. (3d) 481 (C.A.), at para. 51. Notably s. 51(26) is substantially the same as s. 33(6) of the *1970 Planning Act*.

subsequent owners of the land. Any other interpretation would undermine the protection envisioned by these provisions in the *Planning Act*. Thus, I find that Cedarhill is bound as a successor in title to the golf course lands.

Does Y5 create contingent interests in land?

[48] Cedarhill argues that any contingent interests in land created by the subdivision agreement in 1980 must have vested by the year 2001. Otherwise, the interests are void for remoteness. Cedarhill asserts that Y5 created a series of contingent interests in land in 1980 when it was executed and none of these interests have vested to date. These include the following: (1) possession and operation of the golf course; (2) registration of a lien against the land; (3) right to enter upon and make use of the land during the off-season; and (4) Cedarhill's right to reassume possession. I disagree.

[49] First, the rule against perpetuities has no application in this case, as it is a rule applicable to contingent interests in land that fail to vest within the perpetuity period. It does not apply to contractual rights that simply involve land.[26]

[50] Second, in my view, the terms of Y5 are clear: the City has the right to enter the golf course lands as a licensee. Y5 reiterates on six occasions that the City's right is one of a licensee.

[51] A license is a purely contractual interest:

> A licence, essentially, is a contractual right to use another's land, but that is not an ownership interest in land. A licence is the grant of authority to enter upon another's land for an agreed purpose where such entry would otherwise be a trespass and, therefore, the

[26] *Canadian Long Island Petroleums Ltd. et al v. Irving Industries Ltd.*, [1975] 2 S.C.R. 715, at p. 735; *Ottawa (City) v. ClubLink Corporation ULC*, 2021 ONCA 847, 159 O.R. (3d) 255, at para. 2.

> landowner granting the licence cannot bring an action for trespass until the licence comes to an end or is revoked. [emphasis added][27]

[52] Third, Cedarhill's assertion that the Court of Appeal's decision in *ClubLink* is applicable to this case is ill-founded, for the following reasons. The Court of Appeal's analysis focused on the proper interpretation of two contractual provisions: one that required the conveyance of certain lands to the City "[i]n the event that [ClubLink] desires to discontinue the operation of the golf course and it can find no other persons to acquire or operate it" (emphasis in original), and another that contemplated a future re-conveyance of those lands from the City to ClubLink on stated terms.[28] The Court of Appeal found that those conveyance provisions "create contingent interests in the golf course lands" and, since neither of those contingent interests had vested within the perpetuity period, they were now void.[29] In my view, there are no analogous conveyance provisions in Y5. The City's rights are purely contractual and, furthermore, that contractual right is not contingent. Rather, the grant was acquired the date that the subdivision agreement was executed.[30]

Does Y5 amount to a constructive taking?

[53] Cedarhill contends that to enforce the terms of Y5 would constitute a *de facto* expropriation to which it is entitled to compensation in accordance with the *Expropriations Act*.[31] Cedarhill argues that the test for a constructive taking focusses on "effects" and "advantages", and as such

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[27] *Langille v. Schwisberg* (2010), 4 R.P.R. (5th) 263 (Ont. S.C.), at para. 88 (see also paras. 89-90).
[28] *ClubLink*, at paras. 17-18.
[29] *ClubLink*, at paras. 48-49, 60-61, 64-65.
[30] Parenthetically, the case was remitted to this court to be considered further. Labrosse J. released his reasons on October 13, 2023. Counsel conceded that Labrosse J.'s decision is of no relevance to this case.
[31] R.S.O. 1990, c. E.26.

substance and not form is to prevail. Where an owner is left with only notional use of the land, deprived of all economic value, the test will be satisfied.

[54] The Supreme Court has confirmed that a "'taking' is a 'forcible acquisition by the Crown of privately owned property … for public purposes'".[32] Further, the *Expropriations Act* defines "expropriate" as "the taking of land without the consent of the owner by an expropriating authority in the exercise of its statutory powers" [emphasis added].

[55] In my view, there is no basis for Cedarhill's assertion that the exercise of the City's licence, if that was to occur, would amount to a constructive taking, for the following reasons. First, Cedpar voluntarily executed the subdivision agreement, including Y5. Second, Cedpar's concurrence with and consent to the agreement is fundamentally inconsistent with any allegation of expropriation of the golf course lands by the City. Third, the *Expropriations Act* defines "expropriate" as "the taking of land without the consent of the owner by an expropriating authority in the exercise of its statutory powers" [emphasis added].[33] Cedpar's consent to the subdivision agreement in 1980 is, in my view, a complete answer to any allegation of "effective confiscation" of the golf course lands, as would be required to establish a constructive taking for which compensation should be considered.[34]

Conclusion

[32] *Annapolis Group Inc. v. Halifax Regional Municipality*, 2022 SCC 36, 486 D.L.R. (4th) 243, para. 18.
[33] *Expropriations Act*, s. 1(1).
[34] *Annapolis*, at paras. 19, 21, 43; *Mariner Real Estate Ltd. v. Nova Scotia (Attorney General)*, 1999 NSCA 98, 178 N.S.R. (2d) 294, at paras. 48-50, 80.

[56] Recall that the parties expressly contemplated a scenario where "the continuing operation of the lands for the purpose of playing golf is not commercially viable". The uncontested evidence of Cedarhill is that the golf course is financially unviable, which I accept. Thus, to force Cedarhill to continue operating the golf course in perpetuity would lead to an impractical result.

[57] While Y5 grants the City a "step-in" remedy, no one has argued – and for good reason, it would seem – that the City has any intention of taking over operation of the golf course. Accordingly, it appears unlikely that cl. 3 of Y5 will be engaged to determine whether the City can make the golf course a commercially viable operation.

[58] That leaves cl. 8 of Y5, which provides that it may be amended or altered by Cedarhill and the City "as they may agree". This, in my view, provides the obvious mechanism by which Cedarhill could stop operating the golf course, with the City's agreement.

[59] In its prayer for relief, Cedarhill claimed such further and other relief as this Honourable Court deems just in the circumstances.

[60] Rule 38.10 of the *Rules of Civil Procedure*[35] provides the following, *inter alia*:

> (1) On the hearing of an application the presiding judge may,
>
> > (a) grant the relief sought or dismiss or adjourn the application, in whole or in part and with or without terms.

[61] In the result, I would adjourn the application for a period of 120 days and direct that the parties engage in mediation, with a view to achieving resolution in keeping with cl. 8 of Y5.

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[35] R.R.O. 1990, Reg. 194.

[62] Failing resolution, the matter shall be returned to the court to consider what, if any, direction may be provided in accordance with cl. 8 of Y5.

[63] Finally, in the circumstances, I would adjourn the assessment and award of any costs of the application for the time being.

The Honourable Mr. Justice B. W. Abrams

Released: April 2, 2024

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B E T W E E N:

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Applicant

– and –

THE CITY OF OTTAWA

Respondent

REASONS FOR DECISION

Abrams, J.

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