

ISSUE DATE:

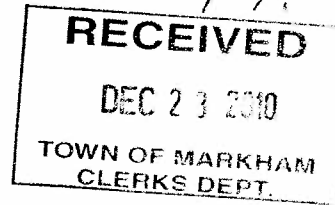
**DEC. 22, 2010**



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario



MM100012

IN THE MATTER OF subsection 47(10) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Request by:	Minister of Municipal Affairs and Housing
Subject:	Amendment to the Minister's Zoning Order, Ontario Regulation 473/73
Requested amendment:	A temporary golf centre and accessory buildings and structures
Applicant:	Within Range Golf Centres Inc.
Property Address/Description:	8111 Leslie Street, Part of Lots 7 & 8, Concession 3
Municipality:	Town of Markham
OMB Case No.:	MM100012
OMB File No.	MM100012
MMAH File No.	19-Z0-03207-07

#### **APPEARANCES:**

##### **Parties**

Within Range Golf Centres Inc.

Leslie Street Thornhill Ratepayers  
Association Inc.

Her Majesty the Queen in Right of Ontario  
as represented by the Minister of the  
Ministry of Municipal Affairs and Housing

##### **Counsel**

R. Smith

A. Burton

R. Boxma

#### **AMENDING DECISION DELIVERED BY J. CHEE-HING AND ORDER OF THE BOARD**

Upon consent of the Parties, the Ontario Municipal Board (the "Board") amends its Decision issued on October 29, 2010 (the "Decision") to make the following changes:

- The fourth last line of page 6 of the Decision is to be amended to delete the reference made to "Mr. Argue" and substitute it for "Mr. Alcorn";
- Attachment "1" of the Decision is amended by changing the Maximum Gross Floor Area from 162 square metres to 302 square metres. The purpose of this change is to reflect the testimony of Mr. Alcorn in that the club house gross floor area was either 161 or 162 square metres and that the maintenance shed gross

floor area was 140 square metres. Further, the purpose of this change is to also correct an inadvertence in the draft Zoning Order, in which the maximum gross floor area was correctly set at 162 square metres but inadvertently did not include the gross floor area of the maintenance shed and which, if it had, would have made the total gross floor area 302 square metres.

In all other respects, the Board's decision remains the same.

So Orders the Board.

"J. Chee-Hing"

J. CHEE-HING  
MEMBER

Issue Date:

**October 29, 2010**



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

**RECEIVED**

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TOWN OF MARKHAM  
CLERKS DEPT.

MM100012

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Jim Bair  
Geoff Doe  
Lucy

IN THE MATTER OF subsection 47(10) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Request by: Minister of Municipal Affairs and Housing  
Subject: Application for an amendment to the Minister's Zoning Order, Ontario Regulation 473/73 (MMAH File No. 19-ZO-03207-07)  
Requested amendment: To permit a temporary golf centre and accessory buildings and structures associated with the proposed use  
Applicant: Within Range Golf Centres Inc.  
Property:  
Address/Description: 8111 Leslie Street, legally described as Part of Lot 7 & 8, Concession 3  
Municipality: Town of Markham  
OMB Case No.: MM100012  
OMB File No. MM100012

## **APPEARANCES:**

### **Parties**

### **Counsel**

Within Range Golf Centres Inc.

R. Smith

Leslie Street Thornhill Ratepayers  
Association Inc.

A. Burton

Her Majesty the Queen in Right of Ontario  
as represented by the Minister of the  
Ministry of Municipal Affairs and Housing

R. Boxma

## **DECISION DELIVERED BY J. CHEE-HING AND ORDER OF THE BOARD**

### **BACKGROUND:**

Within Range Golf Centres Inc. (the "Applicant") proposes to develop as a temporary use, a recreational golf centre with a golf driving range facility and associated uses and structures on lands located at 8111 Leslie Street in the Town of Markham. The lands are located south of Highway 407 and immediately west of Highway 404. The site is owned by the Province and managed by the Ontario Realty Corporation (ORC).

ORC had put out a proposal call for the temporary use of the subject lands as it was surplus to their current needs. It was in response to this proposal call that the Applicant submitted its proposal. The 57.25 acre (23.17ha) site is within the Parkway Belt West Plan (PBWP) and as such, is subject to the policies of this Plan. It is also subject to a Minister's Zoning Order (MZO), Ontario Regulation 473/73. The Applicant is requesting a lease agreement with the ORC for 5 periods of 3 years to operate the site as a temporary recreational golf centre.

Within Range Golf Centres Inc. filed an application in April 2007 with the Ministry of Municipal Affairs and Housing (MMAH) to amend the MZO to permit the proposal. In January 2010, Mr. Len Beitelman, a resident and abutting landowner, requested that the application to amend the MZO be referred to the OMB pursuant to section 47(10) of the *Planning Act* (the "Act"). Mr. Beitelman filed his objections on behalf of himself and the Summerdale Ratepayers Association (the "Ratepayers"). The Minister of MMAH subsequently referred the matter to this Board for adjudication.

### **The Proposal:**

The application requests an amendment to the MZO to permit an outdoor golf driving range, miniature golf course and chipping and putting area, together with accessory buildings and structures which includes a baseball batting cage, a clubhouse with patio, a retail shop, an office, an equipment maintenance shed, a retail shop for take-out food and beverages (but not including a restaurant) and parking facilities (Ex. 5A-C). The operating hours are proposed to be from 9am to 10pm. During the hearing, the Applicant withdrew the requested permission for a baseball batting cage from its proposal.

### **The Current Land Use Designations:**

The site is currently designated under the PBWP as 'General Complementary Use Area' within the Complementary Use Area on the northern portion of the site and 'Electric Power Facility' and 'Utility' within the Public Use Area on the southern portion

(Ex.5A-C). Permitted uses within the MZO are limited to agricultural uses. The proposed uses are not permitted. At the municipal level, site plan approval from the Town is required. The lands are vacant and there is an Ontario Hydro Electric Power Corridor traversing the southern portion of the site.

Council of the Town of Markham (the "Town"), on the recommendations of its planning staff, endorsed the site plan for the proposal with certain conditions. The Town, as a circulating agency for the MZO amendment application, forwarded its site plan approval comments to the MMAH.

At the hearing, the Applicant called four expert witnesses – a planner, an acoustical engineer, a transportation engineer, a lighting designer and an ecologist. The Objectors called 2 expert witnesses – a planner, an acoustical engineer, and 2 lay witnesses – Messrs. L. Beitelman and J. Starkman.

At the onset of the hearing, Mr. R. Boxma, council for the MMAH advised the Board that the Province takes no position on the requested amendment to the MZO to permit the temporary golf centre. He advised that in the event that the Application was approved by this Board on its merits that the amendment should be in the form found in Exhibit 1.

#### **THE ISSUES AND BOARD FINDINGS:**

The Parties' expert witnesses provided evidence which centered on the following issues:

1. Does the proposal conform to the Parkway Belt West Plan (PBWP)?
2. Is the proposed use consistent with the Provincial Policy statement?
3. Is the proposed use compatible with the surrounding area or will it create unacceptable adverse impacts to the surrounding community?
4. Does the proposal represent good planning?

In coming to its findings, the Board reviewed in totality, the evidence given and submissions made at these proceedings.

It is the overall findings of the Board that the proposed golf recreational centre is an outdoor low-intensity recreational and interim use. As an interim use it is permitted within the designations of public use area and complementary use area for the subject lands under the PBWP. In this regard the proposed uses satisfy the conditions found in subsections 5.4.1f) and 5.5.1b) of the PWBP. The Board finds that the leasing of the lands falls within the ambit of "prior to acquisition for public use" as argued by the Applicant's representatives and interim uses are permitted until such time when the lands are used for public use. The Board finds that although the lands are already publicly owned, ORC has not yet determined what the public use will be.

On the issue of unacceptable adverse impacts to the community, noise, light trespass and traffic were the substantive concerns of the Ratepayers. The Board finds that the impulse noise created by the "whacking" of the golf balls will not generate significant noise over the ambient noise for the area and is not an unacceptable adverse impact. The Board finds that the proposed uses are sufficiently set back from the residential areas to the south separated by a 4m high landscaped berm which will be at least 30m from the southern limits of the site.

With respect to the question of light trespass, the Board finds that the halo effect of light is an urban condition. Given the location of the site (at the intersection of Highways 407 and 404) there already exists a halo from the lights at this intersection. Any halo effect that may emanate from the proposal over what already exists at this intersection will not result in an unacceptable adverse impact to the surrounding area. It is the Board's finding that the separation distance together with the proposed 4m high berm will minimize any light trespass onto the residential properties to the south of the site.

On the matter of vehicular traffic generated from the proposal, it is the Board's finding that while there will be increased traffic flows on Leslie Street to and from the site, it is not at a level to create an unacceptable adverse impact to the area. In this regard, the Board prefers the traffic evidence of Mr. Argue for the Applicant who

conducted a traffic study of potential traffic flows and trip generation. The Board notes that his evidence was the only expert evidence on traffic given at the hearing.

It is the Board's finding that the 30-35m southern edge of the site as shown on the site plan including the proposed berm can and should be used as a public trail which could connect to the existing German Mills Creek trail system to the west (Ex. 5B). The Board notes that the Town as one of the conditions of site plan approval requires that the property owner (Province of Ontario) and the applicant acknowledge that a future trail system has been proposed for the site and that the golf facility shall not preclude the option for a future trail system subject to satisfactory arrangements between the Town and the property owner. It is the Board's finding that the site plan be revised to clearly show this 30-35m strip of land including the berm to be set aside for a future trail system. In the Board's view, there is no reason why the proposal cannot co-exist with a public trail on the site. The Board's individual findings and reasons follow.

**Issue 1: Does the proposal conform to the Parkway Belt West Plan (PBWP)?**

**Issue 2: Is the proposed use consistent with the Provincial Policy Statement?**

There are two designations of the PBWP that apply to the subject site. General Complementary Use Area applies to the northerly part of the site (approximately 25 ac.) and Public Use Area – Utility and Electric Power Facility on the southern part of the site (approximately 32 ac.) (Ex. 28).

The Applicant's planner (Mr. Alcorn) gave opinion evidence that within the northerly portion of the site that is subject to the General Complementary Use Area designation, the proposed golf centre is a low density and low-intensity outdoor recreational use and meets the conditions found in subsection 5.5.1b) of the PBWP. On the southerly portion of the site which is designated Public Use Area, it is Mr. Alcorn's planning opinion that the proposed driving range is an interim use and meets the conditions found in 5.4.1f) of the PBWP. Mr. Alcorn opined that section 1.5.1 of the PPS speaks to healthy, active communities that should be promoted by among other things, recreation facilities. It is his opinion that the proposal is an outdoor recreational activity and will be providing recreational benefits to the public and to the students of the abutting high school through a golf instruction program as part of the high school's

educational curriculum. In this regard it is his opinion that the proposal is consistent with the PPS.

Mr. Mannett, planner for the Ratepayers, had a different planning opinion. It was his testimony that the public use area designation does not include recreation as a permitted use. That the interim use section of the PBWP does not apply since the site is not intended for public acquisition as it is already publicly owned by the Province. In his opinion the proposed golf centre is not permitted under either designation that applies to the site. It is his view that section 6.5 of the PBWP provides for a northern link extending from Woodbridge to Markham that establishes a recreation trail system along this northern link. This trail system also serves as an open corridor for the movement of wildlife along the Parkway Belt. It is his view that the development of a recreational trail system on the subject lands should take precedence over other permitted uses within the two designations that apply to this site. It is his planning opinion that the golf centre proposal will effectively block the continuity of the recreational trail system along the Parkway Belt.

It is Mr. Mannett's opinion that the proposal is not consistent with the PPS policies 1.5.1b) and 2.1.2 to the extent that these policies provides for publicly-accessible open space areas and improving and recognizing linkages between and among natural heritage features and areas. The proposal is a privately operated commercial recreation higher intensity use that will replace a publicly-accessible open space area and will not provide for linkages between natural heritage areas.

### **Board's Findings:**

With respect to conformity with the PBWP, it is the Board's findings that the proposed golf centre is an outdoor low-intensity recreational and interim use within the complementary use area and public use area designations for the subject lands. As an interim use it is permitted within the public use area designation. The Board prefers the evidence of Mr. Argue that as a recreational golf centre, the uses are low-intensity and low density. The Board notes that the proposed structures - a clubhouse with patio, a retail shop, an office, an equipment maintenance shed and a retail shop for take-out food and beverages – comprise less than 2 percent of the site and would be of limited



height and massing. The Board finds that the proposed uses satisfy the conditions found in subsections 5.4.1f) and 5.5.1b) of the PWBP.

The Board finds that the leasing of the lands falls within the ambit of "prior to acquisition for public use" as argued by the Applicant's representatives and interim uses are permitted until such time when the lands are used for public use. The Board finds that although the lands are already publicly owned, ORC has not yet determined what the public use will be. The Board notes that it is the ORC that issued a call for proposals for the temporary use of the subject site through a renewable leasing arrangement.

With respect to Mr. Mannett's planning opinion that the site would be best served by the continuation of the public trail system, it is the Board's view that both the golf centre and a public trail system can be accommodated on the site. It is the Board's finding that both uses can co-exist harmoniously. There is no reason why that portion of the site south of and including the berm cannot be used to accommodate a public trail system that would link to the trail systems west of the site.

It is the Board's finding that the proposal is consistent with section 1.5.1 of the PPS to the extent that it is a low-intensity passive recreational use that would be accessible to the public (albeit on a user pay basis) and provide recreational benefits. There also exists the opportunity for the location of a public trail system on the southern portion of the site that would serve as a linkage to the trail systems west of the site. The Board accepts the evidence of the Applicant's Ecologist (Dr. Kitchen) that the site is predominantly a cultural meadow and although it does support an array of wildlife common to urban areas it is not a natural corridor nor does it have any natural heritage features within the meaning of 2.1.2 of the PPS.

**Issue 3: Is the proposed use compatible with the surrounding area or will it create unacceptable adverse impacts to the surrounding community?**

**Issue 4: Is it good planning?**

**Noise Impacts:**

With respect to noise impacts, the Board had to consider the evidence from two noise experts (both acoustical engineers) both offering different opinions on the noise

impacts generated from the “whacking” of golf balls on the proposed driving range. The Applicant’s noise expert (Mr. Coulter) conducted a noise study whose purpose was to determine whether the proposed driving range activities met the Ministry of the Environment’s (MOE) noise criterion (Ex.12). His conclusion was that the preliminary analysis found that the operation of the driving range from 9am to 10pm will meet MOE’s NPC-205 noise criterion from impulse noise provided a 4m high earth berm is constructed along the southerly portion of the site. The sound levels generated by the golf clubs were found to be equal to or less than the ambient sound level generated by road traffic in the area. The ambient sound level generated by road traffic was measured between 8-10pm which is the time period that corresponded to the lowest traffic volumes through the area while the golf facility would be operating.

Mr. Gastmeier, noise expert for the Ratepayers, did a peer review of Mr. Coulter’s noise study. He noted that Mr. Coulter’s noise study was a preliminary analysis, that a more comprehensive study is required to measure the impulse noise from the tees and this cannot be done until the final grading of the site is completed. He had concerns about the accuracy of the ambient noise levels as they were measured between 8pm-10pm during the week. It is his opinion that an MOE Certificate of Approval would be prudent. Mr. Coulter, in his reply witness statement, noted that the MOE has never required a Certificate of Approval for a golf range and has not requested one from the Applicant.

The Board prefers the evidence of Mr. Coulter that the results of his study indicate that the impulse noise generated from the golf driving range would be less than the ambient traffic noise measured from the homes to the south of the site provided that the berm is constructed. The Board accepts his evidence that the operation of the golf centre will meet the MOE noise criterion for impulse noise. The Board accepts the evidence of Mr. Coulter that his analysis complied with the MOE Guidelines and was in fact more conservative. The Board finds that the noise generated from the operation of this facility will not create unacceptable adverse impacts on the homes to the south.

**Light Trespass Impacts:**

Mr. Karl Marot provided expert testimony on behalf of the Applicant. It was his testimony that he reviewed the Applicant's Lighting plan and it is his opinion that there will be no light spillage onto the residential properties to the south given the separation distances. In response to concerns raised about the "halo" effect of the lights from the proposal, it was his opinion that given the location of the site at the intersections of Highways 407 and the 404, this area already has a halo effect from all the existing lights in the area and this is a common urban condition.

The Board saw no reason to doubt his evidence and the Ratepayers brought no evidence to counter his expert opinion. The Board is satisfied that there will be no unacceptable adverse impacts resulting from light trespass onto the surrounding area.

**Traffic Impacts:**

On the matter of vehicular traffic generated from the proposal, it is the Board's finding that while there will be increased traffic flows on Leslie Street to and from the site, it is not at a level to create an unacceptable adverse impact to the surrounding area. In this regard, the Board prefers the traffic evidence of Mr. Argue for the Applicant who conducted a traffic study of potential traffic flows and trip generation. The Board notes that his evidence was the only expert evidence on traffic given at the hearing.

**CONCLUSION:**

For the above noted reasons, the Board finds that the proposed golf centre is an appropriate use for the subject lands and is consistent with good planning principles. The Board notes that the golf centre is an interim use until the ORC determines what will be the most appropriate use of these provincial lands. In that regard, the Applicant will be seeking to operate the golf centre on a renewable three year lease basis. Conditional site plan approval has been granted by the Town subject to the conditions recommended by staff, as well as additional conditions imposed by Council (Ex.4).

As stated earlier, it is the Board's finding that a public trail can and should be located at the southern portion of the site. The Board notes that ultimately it will be up to the Town to pursue this opportunity through the site plan process and it is already a condition imposed by Council. The Applicant has indicated its willingness to work with the Town and the ORC in locating a public trail as part of the Town's Pathway and Trail Master Plan.

The Board will approve the amendment to the MZO in the form provided by the MMAH (Ex. 1) subject to the deletion of the baseball batting cage. This approval will be subject to the condition that the southern edge of the site, up to and including the proposed berm, be set aside for a public trail.

Therefore, the **BOARD ORDERS** that the application for an amendment to the Minister's Zoning Order, Ontario Regulation 473/73 to permit a temporary golf centre and accessory buildings and structures be approved in the form found in Attachment "1" subject to the following conditions:

1. Reference to the baseball batting cage in the amendment be deleted; and
2. The southerly portion of the site, up to and including the proposed berm, be set aside for a public trail.

So Orders the Board.

"J. Chee-Hing"

J. CHEE-HING  
MEMBER

**ATTACHMENT "1"**

*This Consultation Draft is intended to facilitate dialogue on the changes proposed in it. If a decision is made to proceed with the proposal, the comments received during consultation will be considered during final preparation of the regulation.*

**ONTARIO REGULATION**

made under the

**ONTARIO PLANNING AND DEVELOPMENT ACT, 1994**

Amending O. Reg. 473/73

(Regional Municipality of York, Town of Markham)

Note: Ontario Regulation 473/73 has previously been amended. Those amendments are listed in the Table of Unconsolidated and Unrevoked Regulations at [www.e-Laws.gov.on.ca](http://www.e-Laws.gov.on.ca).

**1. Ontario Regulation 473/73 is amended by adding the following section:**

88. (1) Despite section 4, an outdoor golf driving range, practice putting and chipping areas, a club house, a miniature golf course, a baseball batting cage, and 212 parking spaces, together with accessory buildings and structures, may be erected, located and used on the lands described in subsection (2) if the following requirements are met:

Minimum Lot Frontage	196 metres
Front Yard Setback	400 metres
Minimum Side Yard Setback	100 metres
Minimum Rear Yard Setback	375 metres
Minimum Opposite Side Yard	25 metres
Maximum Building Height	8 metres
Maximum Gross Floor Area	162 square metres
Maximum Parking Spaces	212

(2) Subsection (1) applies to that parcel of land in the Town of Markham in The Regional Municipality of York, being part of Lots 7 and 8 in Concession 3, designated as Parts 1 to 11 on a Plan of Survey deposited in the Land Registry Office for the Land Titles Division of York Region (No. 65) as Number 65R-21889, and identified as part of Property Identifier Number 03030-0035 (LT) and Property Identifier Number 03030-0039 (LT).

**2. This Regulation comes into force on the day it is filed.**

Made by:

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