



## **PLANNING AND BUILDING SERVICES**

**Town of Newmarket**

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May 25, 2016

### **JOINT REPORT # 2016 - 21**

#### **DEVELOPMENT AND INFRASTRUCTURE SERVICES – PLANNING CORPORATE SERVICES - FINANCE**

**TO:** Committee of the Whole

**SUBJECT:** Newmarket Parkland Dedication By-law and Marketing the Corridors

**ORIGIN:** Planning and Building Services and Finance

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#### **RECOMMENDATIONS**

**THAT Development and Infrastructure Services/Planning & Building Services Report 2016-21 dated May 25, 2016 regarding the Town of Newmarket's Parkland Dedication By-law be received and the following recommendation be adopted:**

- 1. THAT the draft Parkland Dedication By-law for the Town of Newmarket as contained in Attachment 1 be received.**
- 2. AND THAT staff be directed to post the draft by-law on the Town's website for 30 days to receive public and stakeholder comments.**
- 3. AND THAT staff report back to the August 29, 2016 Committee of the Whole meeting with the final recommendation for a Parkland Dedication By-law for Council's approval.**

#### **PURPOSE OF THIS REPORT**

The purpose of this report is to provide information to Council regarding a draft Parkland Dedication By-law that has been prepared by staff, and request Council direction to initiate a final public/stakeholder consultation period. The draft Parkland Dedication By-law is included as Attachment 1.

## **COMMENTS**

### **Rationale**

A Parkland Dedication By-law is required by the Town based on the following rationale:

1. The Town does not currently have a Parkland Dedication By-law. As an alternative, the Town currently collects parkland or cash-in-lieu (CIL) of parkland on the basis of 5% of the land for residential uses and 2% of the land for commercial and industrial uses as per the *Planning Act*'s maximum allowance, as implemented through Official Plan Section 8.2.2.
2. On December 3, 2015, Ontario passed Bill 73, *the Smart Growth for Our Communities Act, 2015*, which includes changes to how much land can be conveyed to a municipality for parkland purposes and requires municipalities to have a formal parkland dedication by-law in place in order to collect such funds. Most significantly, Bill 73 decreased the alternative parkland dedication requirement for residential development from 1ha per 300 units to 1ha per 500 units. This provision will be enacted by the Province on July 1, 2016.
3. The Urban Centres Secondary Plan promotes the intensification of the Urban Centres and establishes the context for different forms of parkland more suited to urban areas. Therefore, a parkland strategy is required specific to this urban context.

The attached draft Parkland Dedication By-law addresses the above three issues.

### **Summary of the Proposed Parkland Dedication By-law**

Land Requirement or CIL Amount in all areas of the Town outside of the Urban Centres:

- i. The proposed By-law includes the requirement of an amount of land at a rate of 1ha per 300 dwelling units, and a CIL rate of 1ha per 500 dwelling units. This is consistent with the requirements of Bill 73.

Land Requirement or CIL Amount within the Urban Centres:

- i. The proposed By-law includes the requirement of an amount of land at a rate of 0.7ha per 1000 residents, as per the targets set in the Parks Policy Development Manual and Urban Centres Secondary Plan.

- ii. Recognizes different forms of parkland for urban settings: Neighbourhood Parks (including urban squares and plazas, strata parks, privately owned public spaces, pedestrian mews, sliver spaces and pocket parks).
- iii. Institutes a maximum 25% cap of development lands for parkland, allows for CIL to account for any differences between required and actual physical land conveyances.

#### Parkland Credit:

- i. Neighbourhood Parks and Urban Squares and Plazas within the Urban Centres: 100% credit of the value of the land.
- ii. Pocket Parks, Sliver Spaces and Pedestrian Mews within the Urban Centres are also eligible for parkland credit as per associated legal agreements.
- iii. Privately Owned Public Space (POPS) subject to a public easement: 20% credit of the value of the land.
- iv. Lands dedicated to the Town for underground hydro: 10% credit of the value of the land.
- v. Cultural heritage conservation within Historic Downtown Newmarket and with respect to development or redevelopment of designated properties pursuant to Parts IV, V and VI of the *Ontario Heritage Act*: 20% credit of the value of the land.

#### Determination of Value:

- i. Town and Owner to jointly commission and fund an appraisal.
- ii. If the Owner does not agree with the appraisal, the Owner may commission an Owner Appraisal at his/her expense.
- iii. Where the difference in the appraised value of the two appraisals is 10% or less, the average of the two will be deemed the market value.
- iv. Where the difference between the appraised values is greater than 10%, the Town and the Owner may elect to share the cost of a third independent appraisal.
- v. The value will be determined based on the average between the third independent appraisal and the value of whichever former appraisal is closest to the value of the third party appraisal.

- vi. If agreement cannot be reached either the Town or the Owner may elect to resolve the dispute through arbitration or an appeal to the OMB.

Eligible Projects for Parkland Dedication or Cash-in-Lieu:

- i. Land for parks and other public recreational purposes including, any site preparation and drainage, play equipment, splash pads, site furniture, signage, sports fields, etc.
- ii. The cost of the design and development of parkland.
- iii. Park and other public recreational facilities not funded through Development Charges.
- iv. Pathways and trails, and associated street furniture.
- v. Improvements to parks and other public recreational facilities designed to increase the parks and recreational capacity.
- vi. Vehicle and equipment used for parkland and other public recreational purposes.

Exemptions from the Parkland Dedication By-law:

- i. Development or redevelopment of land owned by:
  - Town of Newmarket
  - Region of York
  - Provincial or federal governments
  - Boards of Education
  - A colleges, university or school defined in the Education Act
  - Newmarket Library Board or similar local Boards
  - Southlake Regional Health Centre
  - Not for profit palliative care facilities.
- ii. The reconstruction of a building destroyed due to fire or other accidental cause provided no intensification of the use is proposed.
- iii. The construction or enlargement of an existing single detached, semi-detached or townhouse dwelling.
- iv. The creation of an accessory dwelling unit in accordance with the applicable municipal requirements.

- v. Enlargement of an existing commercial industrial or institutional building provided the enlargement is 10% or less than the size of the building at the time of the first application.
- vi. Temporary building or structure.

## **Policy Context**

### **Planning Act**

Sections 42 (Site Plan) Section 51.1 (Plans of Subdivision) and Section 53 (Consents) of the *Planning Act* make provisions for the conveyance of land to municipalities for parks and other public recreational purposes. These Sections provide that 2% of the land area of a site is required for parkland for commercial or industrial development applications, and 5% is required for all other forms of development including residential applications.

Although physical parkland is the desired form of dedication, cash-in-lieu (CIL) may be received by the Town based on the value of the 2% or 5% land area, and where received, it must be placed in a dedicated parkland reserve fund and may be used for parkland and other public recreational purposes.

The *Planning Act* also allows for alternative parkland dedication rate in recognition that the 5% parkland dedication, which has been typically applied to ground related greenfield residential plans of subdivision, is not sufficient for higher density urban form development. For residential development the *Planning Act* permits up to 1 ha per 300 dwelling units.

### **Bill 73 Amendments to the Planning Act**

Bill 73, which received Royal Assent on December 3, 2015, proposed changes to Section 42 of the *Planning Act*, as summarized below:

1. Before a municipality adopts official plan policies allowing it to pass a by-law under subsection 42(3) (alternative parkland requirement), it must have a parks plan that examines the need for parkland in the municipality.
2. Where an alternative rate is already established in the Official Plan, the study required above **does not apply** retroactively.
3. Where payment in lieu is provided instead of land, the payment in lieu is proposed to be at a lower rate of one hectare for each 500 dwelling units or such lesser rate as may be specified in the by-law (rather than 1ha per 300 units).

4. A requirement that the Treasurer of the municipality provide an annual financial statement relating to the special account for the preceding year that includes prescribed information.

The Town has completed the Parks Policy Development Manual which provides an inventory of the existing parkland, assesses parkland standards and identifies the needs and the parkland service standards based on the projected population to 2031. Therefore, the Town has already addressed no. 1 above. However, the proposed provision for a lower parkland dedication rate for CIL and the annual reporting to Council are new provisions to be included in the *Planning Act*.

Although Bill 73 received Royal Assent on December 3, 2015, not all provisions came into force as of that date. The Bill notes that the majority of the amendments will come into force "on a day to be named by proclamation of the Lieutenant Governor". It was recently announced that this provision will be enacted by the Province on July 1, 2016.

### **Town of Richmond Hill OMB and Divisional Court Case**

In its Official Plan, the Town of Richmond Hill included the standard allowed by the *Planning Act* of 1ha per 300 dwelling units. This provision of the Official Plan was appealed by several developers. The OMB made the decision that the Official Plan parkland requirement not exceed 25% of the land proposed for development, despite the higher standard permitted by the *Planning Act*.

Richmond Hill has sought leave of the Divisional Court to obtain a ruling whether the Board has erred in law by imposing a lower rate from what is prescribed by the *Planning Act*. On April 19, 2016, the Town received endorsement from Divisional Court on this appeal, creating the opportunity for the OMB decision to be re-examined. Notwithstanding this endorsement, the approach proposed in the attached draft By-law proposed a similar 25% cap. Staff feel this is still supportable and an appropriate approach for an interim period of time in support of the "marketing the corridors" initiative.

### **Provincial Policy Statement**

The Provincial Policy Statement (PPS) promotes the development of healthy, active communities by providing policies regarding public spaces, recreation, parks, trails and open spaces.

### **Region of York Official Plan**

The Region of York Official Plan's Intensification policies, which focus on the designated Centres and Corridors, direct that open spaces shall consist of a variety of forms (active and passive spaces, urban squares and areas for community gardening). These policies also require that the Regional Greenlands System be protected and enhanced and include pedestrian-accessible green spaces and passive parks, where appropriate. In particular, policy 5.4.4.6 j) requires that

secondary plans shall include... *provisions for an urban public realm, including passive and active parks and meeting places, such as urban squares, which incorporate art, culture and heritage, and that contribute to a sense of place and clear identity.*

## **Town of Newmarket Official Plan**

Section 8.2.2 of the Town's Official Plan states that "Park and Open Space lands shall be provided by conveyance or by payment of cash in lieu of parkland in accordance with the provisions of the *Planning Act*", which, as discussed, relates to the 5% and 2% land area or equivalent CIL. This is currently the process the Town uses to accept parkland conveyances or payments. However, this section also includes the provision for alternative parkland dedication of "1 hectare for each 300 dwelling units, or at such lesser rate as may be specified in the by-law" to be used for "parks or other public recreational purposes" as provided for in the *Planning Act* (Section 42(3)). The recommended Parkland Dedication By-law implements these provisions of the Town's Official Plan and the *Planning Act*.

As noted, the Town does not currently have a Parkland Dedication By-law and has historically been implementing the maximum 5% land or CIL equivalent as implemented by the above Official Plan policy. The attached draft By-law implements a lesser rate, in accordance with Provincial legislation.

## **The Parks Policy Development Manual**

The Parks Policy Development Manual prepared by Monteith+Brown on behalf of the Town was adopted by Council in November, 2012. The Manual establishes a parkland classification system and proposes a Town-wide parkland service level standard of 4.0 ha per 1000 residents for active parks and passive green spaces, distributed among the following typologies:

- Town Parks – 1.0ha per 1000 residents
- Community Parks – 0.5ha per 1000 residents
- **Neighbourhood Parks – 0.7ha per 1000 residents**
- **Urban Squares and Plazas – are included with Neighbourhood Parks**
- Passive Green Space – Includes Natural Heritage System and flood plain and do not contribute to the active parkland standard.

Based on the above standards and population increases, the Parks Policy Development Manual identified that there will be a 10.5ha parkland shortfall on a Town-wide basis, by 2031.

## **Urban Centres Secondary Plan**

When developing the Newmarket Urban Centres Secondary Plan, it was determined that “Neighbourhood Parks”, which include Urban Squares and Plazas as listed in the above table, are the most appropriate scale that could realistically be accommodated within the Urban Centres. Accordingly, the Neighbourhood Parks target of 0.7ha per 1000 residents has been carried forward as the urban centres parkland service level standard. This standard is implemented in the attached draft By-law.

Neighbourhood Parks are primarily walk/bike-to parks, catering to the recreational needs of residents living within their general vicinity. Neighbourhood Parks are generally intended for unorganized, spontaneous leisure activities, along with a limited number of organized facilities. Urban Squares and Plazas are included in the service level target for Neighbourhood Parks, but take on a slightly different physical form. These are smaller than true Neighbourhood Parks, and are intended to serve as interesting public spaces for unorganized and passive social, cultural and leisure activities. They typically emphasize opportunities for public art and cultural expression. They may include formal and informal playgrounds, seating areas and unstructured green space.

The Secondary Plan carries forward the Parks Policy Development Manual's conclusion that there will be a Town-wide 10.5ha deficiency in parkland by 2031, and notes that the residents within the Urban Centres will also need to be served by Community and Town Parks outside the Urban Centres.

## **By-law Preparation**

A previous draft By-law was prepared in May, 2015 which proposed a gradual phasing in of a 1ha:300 dwelling units parkland standard on a Town-wide bases, as per the Planning Act maximum. However, this early draft did not speak to the various specific park typologies found in urban contexts, did not provide a means of accepting such typologies as parkland, and did not address the requirements of Bill 73.

The May, 2015 draft By-law was subsequently peer reviewed by Barry Lyon Consultants. This review concluded that the 1ha:300 dwelling units parkland standard, even on a phased-in basis, would likely discourage investment and delay the achievement of the Town's policy objectives regarding intensification as per the Urban Centres Secondary Plan.

Following this peer review, Staff retained the consulting services of the Planning Partnership and a draft technical memorandum was prepared which proposes a parkland strategy that achieves a parkland system that adequately serves the needs of the Town, and outlines specific strategies of parkland dedication for urban contexts that will not discourage investment.



Planning staff then met informally with representatives from BILD to review the draft proposed parkland strategy as documented in the technical memorandum. BILD endorsed the strategy in principle.

The attached draft By-law was then prepared based on the direction of the technical memorandum. In addition to providing a more appropriate approach regarding parkland dedication, the new draft By-law provides:

- a provision for issuing parkland credits;
- a process for determination of value;
- a framework for eligible projects for cash in lieu; &
- exemptions from parkland dedication.

### **Provisions Specific to the Urban Centres**

The proposed By-law provides an up-to-date approach for parkland dedication across the entire Town, however it contains context-sensitive requirements by providing different approaches for two areas of the Town: (i) the entirety of the Town except for the Urban Centres; and (ii) areas within the Urban Centres. In both instances, the policy requirements of Bill 73 are addressed.

Sections of the draft by-law are specifically applicable to parkland dedication in the Urban Centres. These sections are based on strategies that more appropriately reflect the urban context of this specific area of the Town. The draft memorandum provides an outline of this Urban Centres approach which directs Newmarket's new Parkland Dedication By-law to *"provide an incentive to facilitate, or at least not frustrate, new, higher density forms of residential development within the identified Urban Centres in in order to achieve the objectives of Town, Regional and Provincial policy objectives and directives"*.

This strategy involves three main elements: (i) reducing the amount of parkland required by the municipality, (ii) applying a cap on the amount of parkland conveyed to the municipality per application, and (iii) accepting more urban forms of parkland that previously would not have accepted.

### **Parkland Dedication Options - Urban Centres Case Study Example**

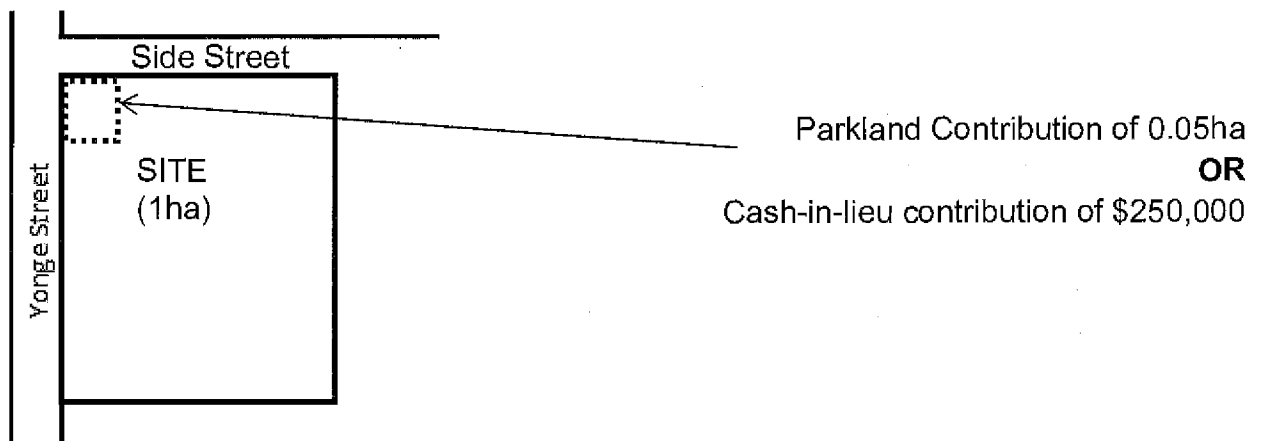
There are several ways in which the Town can collect parkland dedication contributions. The above scenarios have been illustrated to provide a clearer understanding of the parkland area and financial contribution required in each one of these situations using a case study example. This case study involves a 350 unit apartment development proposal on a 1 hectare site in the Urban Centres with a land value of \$5 million per hectare.

**Parkland Conveyance Based on a 350 Unit Apartment Development on 1 Hectare Site with a Land Value of \$5 Million per Hectare**

| Conveyance Option | 5% of Land | 1ha:300 Units                           | 1ha:500 Units  | 0.7ha per 1,000 residents, capped at 25% |
|-------------------|------------|---|--|--|
| Land              | 0.05 ha    | 1.2 ha                                  | 0.7 ha   | 0.25 ha                                  |
| Notes             | Status Quo | Recommended Outside Secondary Plan Area | Not Recommended  | Recommended Inside Secondary Plan Area   |
| Cash-in-Lieu      | \$250,000  | \$5,833,333                             | \$3,500,000  | \$1,250,000                              |
| Notes             | Status Quo | Not Recommended                         | Recommended Outside Secondary Plan Area (Reduced from Bill 73) | Recommended inside Secondary Plan Area   |

**Option 1: Land Dedication or Cash-in-Lieu at 5% of Developed Land (Status Quo)**

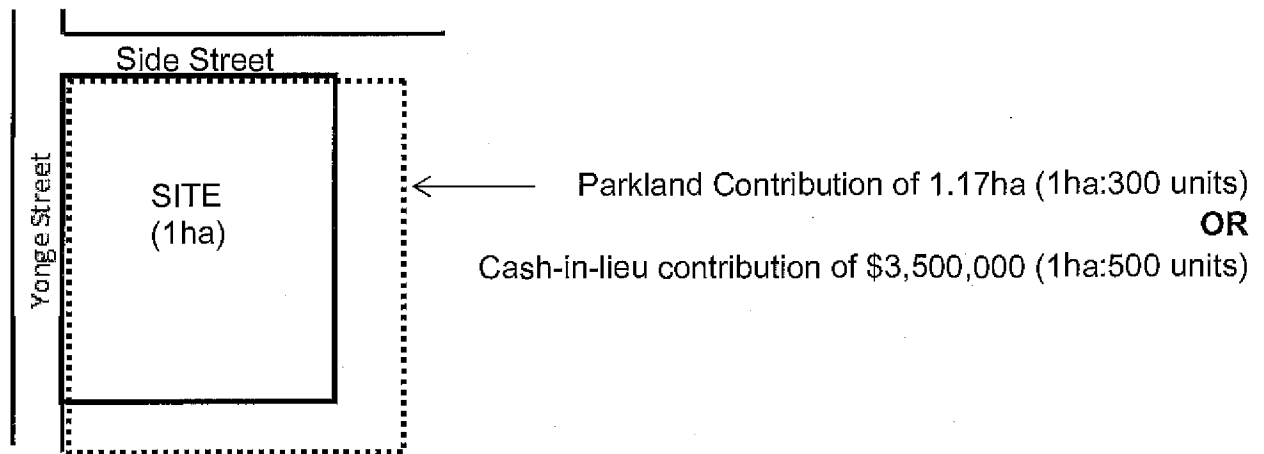
For residential development, the Town currently collects a 5% dedication requirement. Under this scenario, 5% of the developable land area, or a cash-in-lieu equivalent value, is contributed to the Town for parkland purposes. This option works well with low density development; however with higher densities the level of parkland dedication is greatly reduced. Because of the relative low levels of physical land or CIL that this option yields, this option is not appropriate for higher density forms of development. See below for an illustration of how this rate works:



## Option 2: Land Dedication at 1ha:300 units or Cash-in-Lieu at 1ha:500 units

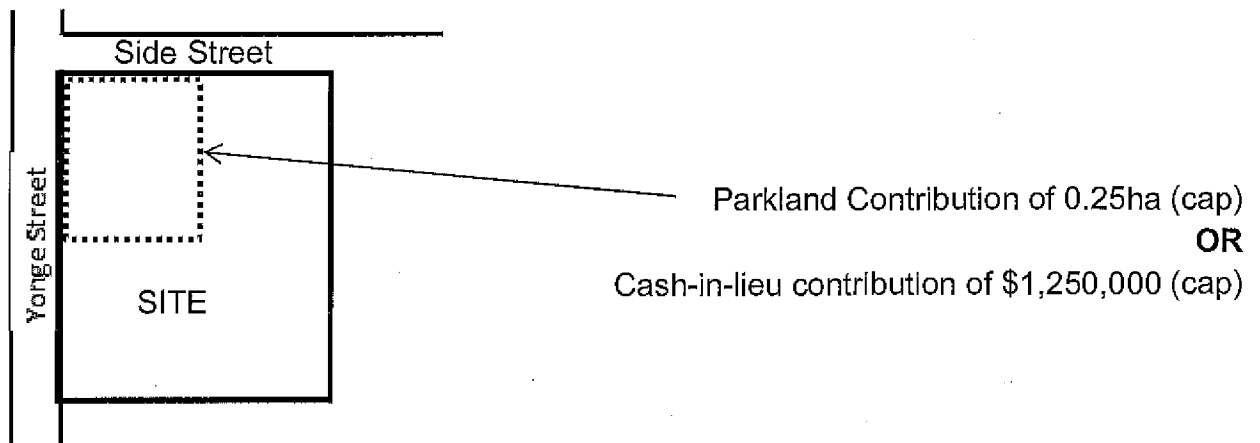
The Planning Act also permits an alternative dedication requirement of 1 ha per 300 units. Bill 73 revised the CIL amount component of this option to 1 ha per 500 units.

This dedication rate allows the Town to collect significantly more dedication (land and CIL) with higher levels of density than option 1; in this example the parkland contribution would exceed the total site area, and the CIL contribution would be 14 times that of option 1. Because of the physical land or CIL requirements that this option yields for the Secondary Plan Area, and which may act as a disincentive to development, this option is not recommended at this time for higher density forms of development, however it is recommended for areas outside of the Secondary Plan Area. See below for an illustration of how this rate works:



## Option 3: Land Dedication Rate at 0.7 hectare per 1000 people, capped at 25% ("Marketing the Corridors")

The Planning Act permits a maximum of 1 ha per 300 units. However, municipalities can go below this maximum provided a study has been undertaken. As such, this option requires a parkland contribution calculated at 0.7ha per 1000 people, but introduces a cap of 25% of the development lands. This is an accepted approach found in other urban contexts. This option provides an appropriate balance of physical land for an urban parks system and collects a competitive level of CIL that encourages intensification. See below for an illustration of how this rate works:



### **Parkland Dedication - Community Impact**

With an understanding of the three options provided above, this section analyses the impact each parkland dedication rate has on development incentives and how it will help the Town reach its desired service level.

This model assumes that the average value of land in the Low Density designation is \$2 million per hectare, in the Medium Density designation is \$4 million per hectare, in the Medium-High Density designation is \$5 million per hectare, and in the High Density designation is \$6 million per hectare. It also assumes that development will be evenly split between these density designations. Lastly, it assumes that 85% of the contributions will be collected as CIL and spent outside the Secondary Plan area where land is less expensive but still accessible to residents along the corridors.

The results of the model are shown in Table 1. It was found that the current 5% land dedication is insufficient to achieve the desired service level of 0.7ha per 1000 residents as per the Parks Policy Development Manual and Secondary Plan. Meanwhile the 1ha per 300 unit and 1ha per 500 unit rates exceed the current desired service level; however, on a per unit cost basis the dedication requirement likely exceeds a reasonable cost for the development community. The third option meets the 0.7 ha per 1000 residents service level, under the assumption noted above where the majority of parkland revenue is used to purchase land outside of the Secondary Plan area.

**Table 1: Community Impact of Parkland Dedication Rate Options in the Secondary Plan Area**

|                                 | <b>5% rate</b>                           | <b>1ha:300 Units Land or<br/>1ha:500 Units CIL</b> | <b>0.7ha:1000 residents,<br/>capped at 25%</b> |
|---------------------------------|--|--|--|
| <b>Cost Per Unit</b>            |  |  |  |
| <b>Average Cost</b>             | \$761                                    | \$10,431   | \$3,750  |
| <b>Hectares per 1000 people</b> |  |  |  |
| <b>Service Level</b>            | 0.1                                      | 1.7  | 0.7  |
| <b>Conclusion</b>               | ✗ Insufficient to meet<br>parkland goals | ✗ Exceeds parkland<br>goals                        | ✓ Achieves parkland<br>goals                   |

Given the balance of cost and reaching desired service levels, staff recommends using option 3 for the purpose of parkland dedication within the Urban Centres.

### **Parkland Dedication Example Uses**

Option 3 is flexible in that it allows physical parkland to take the form of a range of urban parkland typologies. On sites over 0.1ha, the recommended approach is to require some designation of physical land:

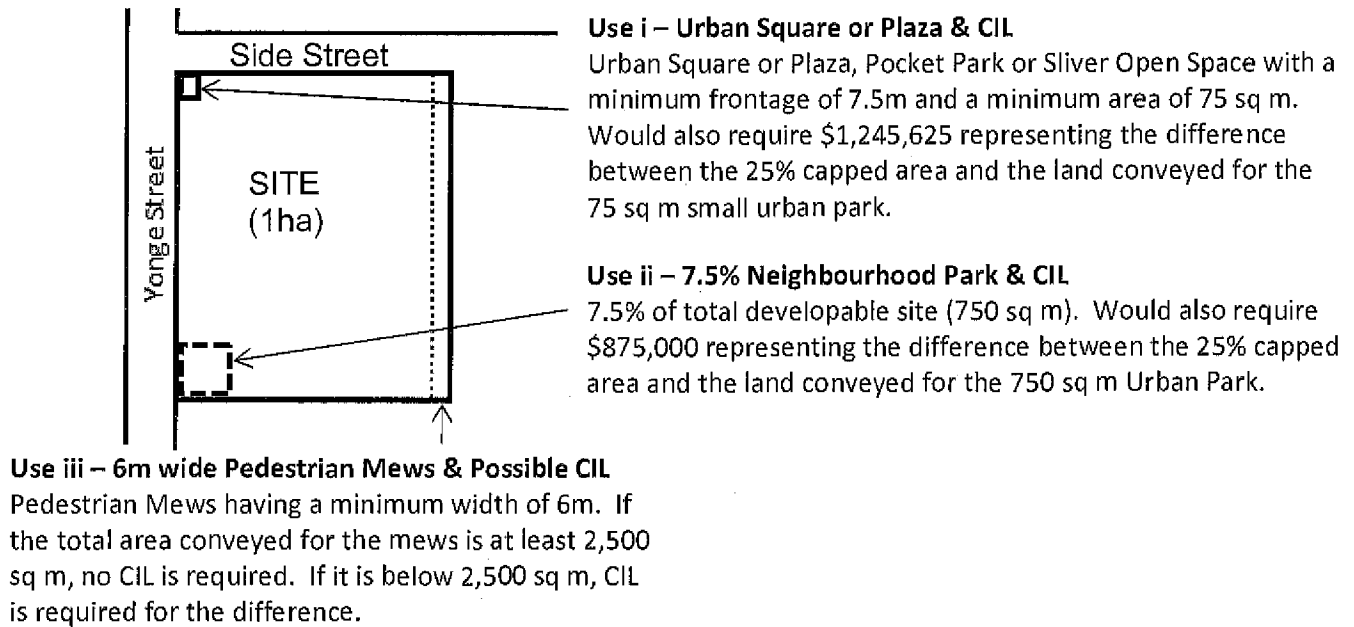
- (i) Urban Park land contribution of 7.5% of site; and/or
- (ii) Urban Square or Plaza, Pocket Park or Sliver Open Space; and/or
- (iii) 6m wide Pedestrian Mews.

The remainder of the value that is not conveyed as land would be conveyed as cash-in-lieu. On sites below 0.1ha, these three conveyance uses are not feasible as the land area required by the 0.7ha:1000 resident calculation is not sufficient to establish suitable parkland. When providing parkland on site is not desirable, a fourth method can be used:

- (iv) Cash-in-lieu.

The figure below illustrates these methods. Again, this case study involves a 350 unit apartment development proposal on a 1ha site in the Urban Centres with a land value of \$5 million per hectare.

**Figure 4: Illustration of Parkland Dedication Uses**



Option 3, known as the “Marketing the Corridors” approach, provides the Town with a sophisticated option for parkland dedication within the corridors. In keeping with Council’s objective to encourage intensification along the corridors, this option provides a parkland dedication rate that is competitive with other GTA municipalities. In addition, this option fulfils the objective of obtaining physical land along the corridors for the development of an urban parks system and recognizes a range of previously unaccepted forms of urban parkland.

Because it is an incentive-based approach, it is recommended that this strategy be reviewed every three years to ensure it is achieving its desired objectives and to test the need for the level of incentive.

## **COMMUNITY CONSULTATION**

Significant public/stakeholder consultation has occurred on the matter of parks and open space and parkland dedication through the development of the parks policy manual, the Secondary Plan, and the 2015 draft parkland dedication by-law. Following a peer review of the draft by-law and the technical memorandum provided by the external planning consulting firm, staff again met with BILD to review the revised approach outlined in the memorandum.

Given the revised approach to the by-law, which now outlines specific strategies of parkland dedication for an urban context like the Secondary Plan area, a further public/stakeholder consultation period is proposed. In particular, staff recommends that the draft by-law be placed on the Town’s website for a commenting period of 30 days, following which staff will bring back a

final parkland dedication by-law for Council's consideration at the August 2016 Committee of the Whole meeting.

## **HUMAN RESOURCE CONSIDERATIONS**

None directly applicable to this report.

## **BUDGET IMPACT**

The new parkland dedication by-law will have a positive impact on revenue for the Town. Using 10-year growth projections provided for the 2014 Capital Financing Sustainability Strategy, Staff estimated the total amount of revenue through parkland dedication over the next 10 years. As aforementioned, a split of 15% of the contribution as land and 85% of the contribution as cash-in-lieu will achieve the 0.7 hectare per 1,000 people service level. The revenue forecast is illustrated in the table below:

**Table 2: 10-Year Parkland Dedication Contribution Forecast**

| 5% rate (Status Quo) |           | 0.7ha:1,000 residents,<br>capped at 25% (Marketing<br>the Corridors) |            |
|----------------------|-----------|--|------------|
| \$                   | 3,321,472 | \$   | 16,607,359 |

## **BUSINESS PLAN AND STRATEGIC PLAN LINKAGES**

### *Living well*

- Emphasis on active lifestyles and recreational opportunities.

### *Well Balanced*

- Providing recreational facilities and services.

### *Well equipped & managed*

- Leadership excellence and leading-edge management.
- Clear vision of the future and align corporate/business plans.

### *Well Planned and Connected*

- Long term strategy matched with a short term action plan(s).
- Improved interconnectivity and interaction amongst neighbours and neighbourhoods.

- Walking and biking trails, paths and lanes.

*Well Respected*

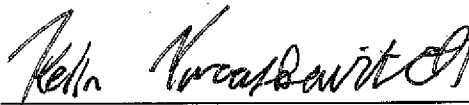
- Being an influential contributor to regional and provincial affairs.
- Discovering innovative and creative solutions for future well-being.

**CONTACT**

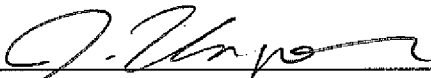
For more information on this report, contact: Adrian Cammaert, Senior Planner, Policy, at 905-953-5321, ext. 2459; [acammaert@newmarket.ca](mailto:acammaert@newmarket.ca)



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Assistant Director of Planning



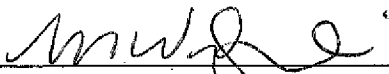
Rick Nethery, MCIP, RPP  
Director of Planning & Building Services




Mike Mayes, CPA, CGA  
Director, Financial Services/Treasurer



Peter Noehammer, P. Eng.  
Commissioner Development and  
Infrastructure Services



per  Esther Armchuk B.A. (Hons.), LL.B., DPA  
Commissioner, Corporate Services

Attachments:

Attachment 1 - Parkland Dedication By-law (draft)



## **ATTACHMENT 1**

### **The Corporation of the Town of Newmarket Parkland Dedication By-law (draft)**

**CORPORATION OF THE TOWN OF NEWMARKET**

**BY-LAW NUMBER 2016-XX**

**A BY-LAW TO PROVIDE FOR THE CONVEYANCE OF LAND AND CASH-IN- LIEU  
THEREOF FOR PARK AND OTHER PURPOSES**

**WHEREAS** sections 42, 51.1 and 53 of the *Planning Act*, as amended, authorize local municipalities to pass by-laws requiring that land or cash-in-lieu thereof be conveyed to the local municipality as a condition of development or redevelopment of land, the subdivision land, or the granting of provisional consent over land;

**AND WHEREAS** the Council for the Corporation of the *Town* of Newmarket has adopted policies within its Official Plan pertaining to the conveyance of land or cash-in-lieu thereof to the *Town* as a condition of development or redevelopment under the *Planning Act*, as amended;

**AND WHEREAS** Council for the Corporation of the Town of Newmarket deems it necessary and expedient to enact a by-law to provide for the provision of lands for park or other public recreational purposes and the use of alternative requirements therefor;

**NOW THEREFORE THE COUNCIL OF THE TOWN OF NEWMARKET ENACTS AS  
FOLLOWS:**

**Definitions:**

In this by-law:

- (a) "Building permit" means a building permit issued pursuant to the Ontario *Building Code Act*, as amended.
- (b) "Cash-in-lieu" means a payment of money for park or other public recreational purposes which is collected in lieu of a conveyance of land which would otherwise be required to be conveyed pursuant to the parkland provisions of the *Planning Act* as incorporated into this By-law.
- (c) "Development" means the construction, erection or placing of one or more buildings or structures on land or the making of an addition or alteration to a building or structure that has the effect of substantially increasing the size or usability thereof, or the laying out and establishment of a commercial parking lot.
- (d) "Dwelling unit" means any property that is used or designed for use as a domestic establishment in which one or more persons may sleep and prepare and serve meals.

- (e) “Land area” means the area of an entire *development* or redevelopment site, including the parcel of land which is to be conveyed for park purposes, but shall not include any natural heritage feature or hydrologic feature including the buffers identified in the Official Plan or Zoning By-Law in effect at the time of determination; or any natural heritage feature or hydrologic feature including the buffers identified by a required Environmental Impact Study and where lands are conveyed into public ownership; stormwater management areas; or floodplain lands.
- (f) “Owner” means the registered owner of the land to be developed, redeveloped, or subdivided.
- (g) “Pocket Park” means a small park that accommodates passive recreation activities and other unstructured activities. Pocket Parks are between 70 and 2500 square metres in size, have frontage on at least one public street, and are primarily hard surfaced, with limited soft surface elements.
- (h) “Privately Owned Public Space” means physical space that is privately owned but appears and functions as public space. These spaces are secured through an easement in favour of the *Town*. These spaces must be designed and maintained to the standards established by the *Town*, and remain open and accessible to the public, or on a schedule established by agreement with the *Town*.
- (i) “Sliver Space” means physical space that adds to the width of the abutting public sidewalk system. They create plazas or forecourts between the face of the building and the abutting street right-of-way.
- (j) “Strata Park” means parkland or a publicly accessible open space located on top of buildings or structures, including but not limited to parking garages. The Strata component of this definition refers to the horizontal delineation of ownership, as it is described in the Ontario Condominium Act.
- (k) “Pedestrian Mews” means a short, pedestrian-only laneway having a minimum width of 6 metres.
- (l) “Temporary” in reference to a building or structure, means a building or structure constructed, erected or placed on land with the explicit understanding that that such building or structure is to be demolished by a set time, as indicated in a legal agreement with the *Town*.
- (m) “Town” means the Corporation of the Town of Newmarket.

#### **Part 1 – Conveyance Required as a Condition of Development or Redevelopment**

- 1.1 As a condition of development or redevelopment of land, the *Town* shall require the conveyance of land to the Town or a cash-in-lieu equivalent to the value of the land required to be conveyed under this by-law for park or other public recreational purposes.
- 1.2 Conveyance, including the location and configuration shall be in the form of land, cash-in-lieu or a combination of cash and land, at the discretion of the *Town*.

## Part 2 – Applicability

- 2.1 This By-law applies to all lands within the corporate limits of the Town of Newmarket.

## Part 3 – Calculation of Conveyance

- 3.1 As a condition of development or redevelopment of land, the Town shall require the conveyance of land or cash-in-lieu to the *Town* for parks and other public recreational purposes as follows:
- (a) In the case of development or redevelopment for **commercial or industrial** purposes, an amount of land or cash-in-lieu equal to 2% of the *Land area* proposed for developed or redeveloped.
  - (b) In the case of development or redevelopment for **mixed use** purposes e.g., residential and commercial, the 2% will be calculated based on the value of the land derived from the percentage of the gross floor area of the building dedicated to the commercial use. For example if 10% of the gross floor area of the building is dedicated to commercial use(s), then 10% of the land value shall be subject to the 2% calculation.
  - (c) In the case of development or redevelopment for uses **other than commercial, industrial or mixed use** purposes, an amount of land or cash-in-lieu equivalent to 5% of the *land area* proposed for development or redevelopment. Alternatively, the amount of *land area* or cash-in-lieu to be conveyed to the *Town* shall be calculated as follows:
    - i. Within areas of the *Town* located outside of the Urban Centres, an amount of *land area* calculated at 1 hectare per 300 *dwelling units*, or cash-in-lieu equivalent of 1 hectare per 500 *dwelling units*.
    - ii. Within the areas subject to the Urban Centres Secondary Plan, an amount of land or cash-in-lieu equivalent to 0.7 hectares per 1000 residents, up to a maximum of 25% of the developable area of any site, whichever is less.

## Parkland Credit

- 3.2 Land deemed acceptable by the *Town*, including Neighbourhood Parks, Urban Squares and Plazas within the Urban Centres, shall receive 100% credit of the value of the land.
- 3.3 Within the areas subject to the Urban Centres Secondary Plan, *Pocket Parks*, *Sliver Spaces* and *Pedestrian Mews*, may be considered as contributing toward the parkland dedication requirement of the Town, as provided for in legal agreements between the owner and the *Town* to ensure that they are designed and maintained to Town standards and are open and accessible to the public.

- 3.4 Where *Privately Owned Public Space* is designed and secured through a public easement for public uses such as interior courtyards, private/public squares and *pedestrian mews* linkages designed to be open and accessible to the general public and maintained to *Town* standards, a credit of 20% of the value of the land secured through an easement for such uses shall be credited as a reduction in the land requirements or cash-in-lieu required for parkland.
- 3.5 *Strata Parks* and *Privately Owned Public Spaces* may be considered as contributing toward the parkland dedication requirement of the *Town*, as long as appropriate legal agreements between the owner and the *Town* are in place to ensure that they are designed and maintained to *Town* standards and are open and accessible to the public.
- 3.6 Where development or redevelopment proposes a *Strata Park*, a credit equivalent to 20% of the value of the land required for parkland shall be credited as a reduction in the land requirements or cash-in-lieu required for parkland.
- 3.7 Where land is dedicated to the *Town* for the purpose of the future burying of hydro and related utility facilities across the frontages of Yonge Street or Davis Drive, a credit of 10% of the value of the land being dedicated shall be credited as a reduction in the land or the cash-in-lieu required for parkland.
- 3.8 Where development or redevelopment is within the Historic Downtown Heritage Conservation District or affects a property designated pursuant to Parts IV, V and VI of the *Ontario Heritage Act* and the identified cultural heritage resource is conserved, a credit equivalent to 20% of the value of the land required for parkland shall be credited as a reduction in the land requirements or cash-in-lieu required for parkland.
- 3.9 Within the areas subject to the Urban Centres Secondary Plan, the *Town* may accept an off-site land dedication in-lieu of an on-site land dedication, as long as the value of the off-site land dedication is of equal or greater value than the on-site land dedication, as determined by Part 4 of this by-law.

#### **Part 4 – Determination of Value**

- 4.1 For development or redevelopment pursuant to the *Planning Act*, the value of the land or cash-in-lieu equivalent to be paid shall be determined as of the value the day before the day the building permit is issued and if more than one building permit is required, the value shall be calculated the day before the day the first building permit is issued.
- 4.2 For development or redevelopment pursuant to the *Planning Act*, the value of the land or cash-in-lieu equivalent shall be determined the day before the day the approval of the draft plan of subdivision and the day before the day the provisional consent was given except where site plan approval is required at a subsequent stage, then the parkland dedication calculation will be subject to Part 4.1 above.
- 4.3 The value of the land for which payment is being made in lieu of a conveyance shall be established by way of an appraisal of the fair market value of the property by a certified

professional appraiser of real estate, who is designated as an Accredited Appraiser by the Appraisal Institute of Canada with experience appraising all types of real property.

- 4.4 The *Town* and the Owner shall commission an appraisal of the Property (the "Initial Appraisal") which expense shall be shared equally between the parties. If the Owner does not agree with the market value of the Property according to the Initial Appraisal, the Owner may retain an appraiser, at the Owner's expense, to prepare a separate appraisal report (the "Owner Appraisal") on the market value of the property. The Owner will cause its appraiser to give a copy of such appraisal report to the Town not later than 30 days following the date on which the Initial Appraisal was delivered.
- 4.5 If the Owner fails to give to the Purchaser the Owner Appraisal within the 30 day period, then it will be deemed that the Owner has accepted the Initial Appraisal and the associated value of the property. If the Owner gives the Town the Owner Appraisal within the 30 day time limit set out above, and the average of the values of the Property in the two appraisal reports is an amount that is less than 10% more than the lowest of the two appraisal reports, then, the average of the values of the property in the two appraisal reports will be deemed to be the market value of the property.
- 4.6 If the Owner gives the Town the Owner Appraisal within the 30 day time limit, and the average of the values of the property in the two appraisal reports is an amount that is equal to or greater than 10% more than the lowest of the two appraisal reports, then, if mutually agreed between the parties, the Town and Owner will respectively instruct the two appraisers to select a third independent appraiser, the expense of such third independent appraiser to be shared equally by the Town and the Owner, to prepare an appraisal report on the market value of the property.
- 4.7 The third independent appraiser will present the appraisal report to the Owner and Town by no later than 45 days following the date on which the Owner delivered the Owner Appraisal to the Town. If the appraisal report of the third independent appraiser is obtained as aforesaid, then the market value of the property will be deemed to be the average of: (X) the value for the Property indicated by the appraisal report of the third independent appraiser, and (Y) the value for the Property indicated by whichever of the Initial Appraisal and the Owner Appraisal is closest to the value for the Property in (X).
- 4.8 If the Town's appraiser and the Owner's appraiser cannot agree on a third party appraiser within 15 days, either the Owner or the Town shall be entitled to submit the selection of the third appraiser to an arbitration under the provisions of the *Arbitration Act* or alternatively appeal to the Ontario Municipal Board pursuant to Section 42 (10) of the *Planning Act*.
- 4.9 All appraisals obtained pursuant to this by-law shall state the criteria used to determine the value within the appraisal.
- 4.10 An appraisal shall remain current for a maximum period of two years from the date of the appraisal.

## **Part 5 – Future Development or Redevelopment**

- 5.1 Subject to Part 4.3, where land has been conveyed or is required to be conveyed to the *Town* under this by-law, or a payment of money in lieu of such conveyance has been received by the *Town* or is owing to it under this by-law, no additional conveyance or payment in respect of the land subject to the earlier conveyance or payment may be required by the *Town* in respect of subsequent development or redevelopment applications, unless:
- (a) there is a change in the proposed development or redevelopment which would increase the density or number of dwelling units of the development; or
  - (b) land originally proposed for development or redevelopment for commercial or industrial purposes is instead proposed for development or redevelopment for other purposes.
- 5.2 Where such increase in density and or dwelling units occur, the conveyance will be subject to the increase in density/dwelling units proposed and the value determined at the time of the applicable application (e.g., at Site Plan).

## **Part 6 – Eligible Projects for Cash-in-lieu**

- 6.1 Where parkland is not provided, cash-in-lieu may be used for the following or similar purposes based upon the following priorities:
- (a) The first priority shall be the acquisition of land for public parks or other public recreational purposes as deemed appropriate by the *Town*.
  - (a) The second priority shall be the design and development of the Neighbourhood Parks identified within the Newmarket Urban Centres Secondary Plan not funded through Development Charges.
  - (b) The third priority shall be the development of parks and other public recreational facilities not funded through Development Charges including:
    - i. park and other recreational facilities including, any site preparation and drainage, play equipment, splash pads, site furniture, signage, sports fields, etc.;
    - ii. pathways, trails and associated infrastructure and furniture, including pedestrian mews as generally identified in the *Town's* Urban Centres Secondary Plan;
    - iii. improvements to existing parks and recreational facilities designed to increase the capacity to accommodate more intensive public uses due to increased development and redevelopment;
    - iv. vehicle and machinery used for parks and other public recreational purposes.
- 6.2 Within the areas subject to the Urban Centres Secondary Plan, all development sites shall contribute to the Urban Park System. The *Town* shall require that all development

applications on sites that are greater than 1000 square metres in size shall identify a land contribution to the Urban Park System, as follows:

- (a) An Urban Park System land contribution of not less than 7.5% of the developable site area; and/or
- (b) An Urban Square or Plaza, Pocket Park or Sliver Open Space with a minimum frontage on a public street of 7.5 metres, and a minimum size of 75 square metres. Larger sites shall include larger Urban Squares or Plazas and/or multiple Urban Park System elements; and/or
- (c) Pedestrian Mews with a minimum width of 6 metres.

The remainder of the required parkland dedication may be made up of an off-site land dedication, or cash-in-lieu of land, or some combination of land and cash-in-lieu.

For sites less than 1000 square metres in size, the Town may accept an on-site land contribution, an off-site land contribution and/or cash-in-lieu of land.

## **Part 7 Exemptions**

7.1 This Bylaw shall not apply to any of the following:

- (a) Development or redevelopment of land, buildings or structures owned by and used for the purposes of the Corporation of the *Town* of Newmarket.
- (b) Development or redevelopment of land, buildings or structures owned by and used for the purposes of the Region of York or provincial government.
- (c) Development or redevelopment of land, buildings or structures owned by and used for the purposes of a Board of Education and/or Newmarket Library Board.
- (d) A college, university or a school defined in the *Education Act*.
- (e) Development or redevelopment of land, buildings or structures owned by and used for the purposes of Southlake Regional Health Centre.
- (f) Not for profit palliative care facilities.
- (g) The replacement of any building that is a direct result of destruction due to accidental fire or other accidental cause beyond the control of the *Owner* provided that no intensification or change in use is proposed, including but not limited to an increase in total *dwelling unit* count or total floor area.
- (h) The enlargement of an existing single detached or semi-detached *dwelling unit* provided the enlargement does not result in an additional *dwelling unit*.



- (i) An accessory *dwelling unit permitted* by the *Town's* Official Plan and Zoning By-law in effect.
- (j) The enlargement of an existing commercial, industrial, or institutional building or structure if the total floor area of the enlargement is 10% or less than the current size of the building(s) or structure(s).
- (k) A *temporary* building or structure.
- (l) Where the total cash-in-lieu payable for development or redevelopment is less than \$100.

## **Part 8 – Lands not Acceptable for Parkland Conveyance**

8.1 The following lands shall not be acceptable for parkland conveyance:

- (a) Lands designated as Natural Heritage in the *Town's* Official Plan, or any land zoned Environmental Protection in the *Town's* Zoning By-law, and any natural heritage feature or hydrologic feature defined by the Provincial Policy Statement (PPS) as significant, including the buffers as required by the PPS, Official Plan or Zoning By-law or as may be identified through an Environmental Impact Study.
- (b) Floodplain lands or Hazard Lands as defined by the Lake Simcoe Region Conservation Authority.
- (c) Stormwater management facilities; and where lands for parks purposes include storm water management facilities, that portion of the land that includes a stormwater management facility or infrastructure shall not be included in the area calculation for parkland conveyance.

## **Part 9 Disputes**

- 9.1 Notwithstanding the provisions of Part 4, and in the event of a dispute between the *Town* and the *Owner* on the value of the land as determined under Part 4 of this by-law is not satisfactory to either party, either party may apply to the Ontario Municipal Board to have the value of the land determined.
- 9.2 If there is a dispute between the *Town* and the *Owner* on the value of the land as determined under Part 4 of this by-law, the *Owner* may pay the amount required by the *Town* under protest and shall make an application to the Ontario Municipal Board in accordance with the *Planning Act*.

## **Part 10 General Provisions**

- 10.1 All lands conveyed to the *Town* under this by-law shall be in a condition satisfactory to the *Town* and in accordance with the requirements of the *Town's* Official Plan Policies

respecting the acquisition of land, including a Record of Site Condition pursuant to the *Environmental Protection Act*.

- 10.2 All lands conveyed to the *Town* under this by-law shall be free of encumbrances.
- 10.3 Any conveyance or payment in lieu of a conveyance required to be made under this by-law shall be made prior to the issuance of any building permit for the land to be developed or redeveloped.
- 10.4 In the event that a section or a part of a section of this by-law is declared invalid by a court of competent jurisdiction, it is the intent of Council that the remainder of the by-law continue in full force and effect.

#### **Administration**

- 10.5 This By-law will be jointly administered by the Director of Planning and Building Services and the Director of Financial Services.
- 10.6 The Director of Financial Services shall maintain a record of all lands and cash-in-lieu received and including all expenditures from the cash-in-lieu parkland reserve fund. The cash-in-lieu parkland dedication record and associated financial statements shall be reported to Council and made available to the public on a yearly basis.

#### **Effective Date**

- 10.7 This by-law shall come into force on the day it is enacted.

#### **Transition**

- 10.8 The provisions of this by-law shall apply to all development applications pursuant to the *Planning Act*, as amended, which are submitted and deemed complete as of the Effective Date of this by-law.

#### **Review of the By-law**

- 10.9 This By-law shall be reviewed with each Official Plan Review or at an earlier time as prescribed by Council.

The portions of this By-law that are specifically subject to the Urban Centres Secondary Plan shall be reviewed every 3 years.

- 10.10 Should any section or part of this By-law be declared or determined by a court or tribunal of competent jurisdiction to be invalid, that portion of this by-law shall be considered to be severed from the balance of this by-law, which will continue to operate in full force and effect.

ENACTED      THIS      DAY   OF      ,      2016.

\_\_\_\_\_  
Tony Van Bynen, Mayor

\_\_\_\_\_  
Andrew Brouwer, Town Clerk