



CORPORATION OF THE TOWN OF NEWMARKET

BY-LAW NUMBER 2016-42

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 publicly owned parkland or a publicly accessible privately owned 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, for a period of three years from the enactment date of this by-law, 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.
 - iii) After this three year period, an amount of land or cash-in-lieu equivalent to 0.7 hectares per 1000 residents, up to a maximum of 50% of the developable area of any site, or the alternative parkland dedication provisions of the Planning Act, whichever is less.

PART 4 - PARKLAND CREDIT

- 4.1 Within the areas subject to the Urban Centres Secondary Plan, physical land conveyed and deemed acceptable by the *Town*, including but not limited to Neighbourhood Parks, Urban Squares, Plazas, *Pocket Parks*, *Sliver Spaces* and *Pedestrian Mews* within the Urban Centres, shall receive 100% credit toward the achievement of the parkland dedication requirement of the Town.

- 4.2 Within the areas subject to the Urban Centres Secondary Plan, *Privately Owned Public Spaces and Strata Parks* that are not in public ownership 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.
- 4.3 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 50% 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. This credit percentage reflects the fact that these lands are not under the control of the Town, which will restrict the ability of the Town to design, manage and program the space as it wants over time. For clarity, the 50% credit described in this section also applies to *Strata Parks* that are *Privately Owned Public Spaces*.
- 4.4 Where development or redevelopment proposes a *Strata Park* that is to be owned by the *Town*, a credit equivalent to 80% 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. This credit percentage takes into account this type of parkland's use limitations and potential additional costs associated with their maintenance. For clarity, the 80% credit described in this section only applies where *Strata Parks* are not *Privately Owned Public Spaces*.
- 4.5 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.
- 4.6 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.
- 4.7 Within the areas subject to the Urban Centres Secondary Plan, the *Town* may accept a full or partial off-site land dedication in-lieu of an on-site land dedication, as long as the value of the land area for 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. The off-site dedication may be a complete or partial parkland contribution with reference to the land area and cash-in-lieu value being provided.

PART 5 – DETERMINATION OF VALUE

- 5.1 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.

- 5.2 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.
- 5.3 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.
- 5.4 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.
- 5.5 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.
- 5.6 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.

- 5.7 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).
- 5.8 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*.
- 5.9 All appraisals obtained pursuant to this by-law shall state the criteria used to determine the value within the appraisal.
- 5.10 An appraisal shall remain current for a maximum period of two years from the date of the appraisal.

PART 6 – FUTURE DEVELOPMENT OR REDEVELOPMENT

- 6.1 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.
- 6.2 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 7 – ELIGIBLE PROJECTS FOR CASH-IN-LIEU

- 7.1 The *Town* shall determine whether a project is eligible for either a full or partial cash-in-lieu contribution.
- 7.2 Cash-in-lieu may be used for 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*.

- (b) 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.
- (c) 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.

7.3 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 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 8 - EXEMPTIONS

8.1 This By-law 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) that is under the same ownership or leasing structure.
- (k) A *temporary* building or structure.
- (l) Where the total cash-in-lieu payable for development or redevelopment is less than \$100.

PART 9 – LANDS NOT ACCEPTABLE FOR PARKLAND CONVEYANCE

9.1 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.
- (d) Lands that are deemed to be contaminated.
- (e) Lands used for utility corridors or any other infrastructure, with the exception of lands dedicated to the *Town* for the undergrounding of hydro infrastructure along the Yonge Street and Davis Drive corridors.

PART 10 - DISPUTES

- 10.1 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.
- 10.2 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 11 - GENERAL PROVISIONS

- 11.1 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*.
- 11.2 All lands conveyed to the *Town* under this by-law shall be free of encumbrances.
- 11.3 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.
- 11.4 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.

PART 12 - ADMINISTRATION

- 12.1 This By-law will be jointly administered by the Director of Planning and Building Services and the Director of Financial Services.
- 12.2 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.

PART 13 - EFFECTIVE DATE

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

PART 14 - TRANSITION

14.1 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 on or after the Effective Date of this by-law.

PART 15 - REVIEW OF THE BY-LAW

15.1 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 at least every 3 years.

15.2 Should any section or part of this By-law be declared or determined by a court or tribunal of competent jurisdiction to 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 12TH DAY OF SEPTEMBER, 2016.

Tony Van Bynen, Mayor

Andrew Brouwer, Town Clerk