



**The Municipal Corporation of the
Town of Fort Erie
BY-LAW NO. 239-04**

**BEING A BY-LAW TO AUTHORIZE CONVEYANCE OF TOWN –
OWNED LANDS TO FORT ERIE UNDERWATER RECOVERY UNIT
(FORMER NORTH END AUXILIARY WATER PLANT) AND TO
ENTER INTO AN AGREEMENT**

WHEREAS Section 268 of the *Municipal Act, 2001* provides for the procedures for the sale of land including the giving of notice to the public, and

WHEREAS the Fort Erie Underwater Recovery Unit Inc. (hereinafter referred to as the “FEUWRU”) has expressed an interest in acquiring title to the lands of the former North End Auxiliary Water Plant, and

WHEREAS at the Council Meeting of February 23, 2004 the following resolution was passed respecting the disposition of the said lands:

THAT: The Municipal Council of the Town of Fort Erie hereby direct staff to facilitate the transfer of ownership of property known as the North End Auxiliary Water Plant from the Regional Municipality of Niagara to the Town of Fort Erie to the Underwater Recovery Unit for the nominal sum of One Dollar (\$1.00), and further

THAT: In the event of dissolution or insolvency by the Fort Erie Underwater Recovery Unit, the Property will be conveyed back to the Town for the nominal sum of One Dollar (\$1.00).

WHEREAS the Municipal Corporation of the Town of Fort Erie acquired the former North End Auxiliary Water Plant lands from the Regional Municipality of Niagara for a nominal sum on the 27th day of April, 2004 under By-law No. 46-04, and described as the Water Lot in front of Lots 20, 21, 22 and Part of Lot 23 on the westerly side of the Chain Reserve as shown on Plan 525, in the former Village of Bridgeburg, now in the Town of Fort Erie (hereinafter called “the lands”), and

WHEREAS the lands were offered to the FEUWRU for a nominal sum of One Dollar (\$1.00) provided the FEUWRU entered into an agreement with the Town of Fort Erie to protect the public interest in the property, and

WHEREAS Public Notice Policy By-law No. 24-04 governs the manner in which notice shall be given under the *Municipal Act, 2001* where same is silent, and

WHEREAS notice of the declaration of surplus lands and the intention of the Council of the Town of Fort Erie to consider a by-law to convey the said lands to the FEUWRU for the nominal sum of One Dollar (\$1.00) subject to conditions was published in The Times on May 8 and 15, 2004, and

WHEREAS Section 107(1) of the *Municipal Act, 2001* provides despite any provisions of this or any other Act relating to the giving of grants or aid by a municipality, subject to section 106, a municipality may make grants, on such terms as to security and otherwise as the council considers appropriate, to any person, group or body, including a fund, within or outside the boundaries of the municipality for any purpose that council considers to be in the interests of the municipality, and

WHEREAS since the lands have value and the conveyance contemplated herein is for a nominal consideration, the nature of the transaction can be construed as a grant of land, and

WHEREAS the objects of the FEUWRU are as follows:

- (i) To provide underwater recovery services to those in need, in the Town of Fort Erie and elsewhere, if necessary;
- (ii) To educate persons in the community concerning water safety and proper use of scuba-diving equipment, and

WHEREAS the Municipal Council of the Town of Fort Erie considers the objects of the FEUWRU to be in the interests of the municipality, and

WHEREAS it is deemed desirable to grant and transfer the lands to the FEUWRU subject to conditions as set out in the agreement annexed hereto as Schedule "A" to this by-law;

NOW THEREFORE the Municipal Council of The Corporation of the Town of Fort Erie hereby enacts as follows:

1. **THAT** the grant and conveyance of the lands to the FEUWRU for the nominal sum of One Dollar (\$1.00) be and it is hereby authorized and approved subject to Sections 2 and 3 hereunder.
2. **THAT** prior to the conveyance of the lands, the FEUWRU shall enter into an agreement with the Town of Fort Erie in the form of Schedule "A" annexed hereto to this by-law.
3. **THAT** prior to the conveyance of the lands, the FEUWRU shall declare to the Town that it has the authority to hold property pursuant to its charter, Articles of Incorporation or by-laws.
4. **THAT** the Mayor and Clerk be and they are hereby authorized and directed to execute the Agreement annexed hereto as Schedule "A" and any and all other documentation necessary to complete this transaction and to affix the corporate seal thereto.
5. **THAT** the agreement annexed hereto as Schedule "A" to this by-law shall be registered in the local Land Registry Office concurrently with the Transfer/Deed of Land.
6. **THAT** all legal expenses related to the transfer of the lands and the registration of the documentation shall be borne by the FEUWRU.

7. **THAT** pursuant to the provisions Section 227 of the *Municipal Act, 2001* the Clerk of the Town of Fort Erie is hereby authorized to effect any minor modifications or corrections of an administrative, numerical, grammatical, semantical or descriptive nature or kind to the by-law and schedule(s) as may be deemed necessary after the passage of this by-law.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 13th DAY OF DECEMBER, 2004.



MAYOR



CLERK

I, Carolyn J. Kett, the Clerk of The Corporation of the Town of Fort Erie hereby certifies the foregoing to be a true certified copy of By-law No. 239-04 of the said Town. Given under my hand and the seal of the said Corporation this day of , 200 .

SCHEDULE "A" TO BY-LAW NO. 239-04

THIS AGREEMENT made in triplicate this day of , 2004

BETWEEN:

FORT ERIE UNDERWATER RECOVERY UNIT INC.

(hereinafter called the "Recovery Unit")

OF THE FIRST PART;

-AND-

THE CORPORATION OF THE TOWN OF FORT ERIE

(hereinafter called the "Town")

OF THE SECOND PART;

WHEREAS the Recovery Unit has expressed an interest in acquiring title to lands of the former North End Auxiliary Water Plant more particularly described as the Water Lot in front of Lots 20, 21, 22 and Part of Lot 23 on the westerly side of the Chain Reserve as shown on Plan 525, in the former Village of Bridgeburg, now in the Town of Fort Erie (hereinafter referred to as "the lands"), and

WHEREAS the Town has consented to the conveyance of the lands subject to conditions in order to protect the future public interest in the lands all of which is deemed to be in the interests of the municipality since the Recovery Unit provides underwater recovery services to those in need in the Town of Fort Erie and elsewhere and educates persons in the community concerning water safety and proper use of scuba-diving equipment;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises, the mutual covenants and conditions herein contained and for valuable consideration, the parties hereto mutually covenant and agree as follows:

1. That the Town hereby agrees to convey the lands to the Recovery Unit for the nominal sum of One Dollar (\$1.00) forthwith subject to conditions set out herein.
2. The Recovery Unit hereby agrees to accept the transfer of lands from the Town for a nominal sum subject to the conditions set out in Section 3 hereunder.
3. The Recovery Unit hereby agrees as follows:
 - 3.1 To reconvey the lands to the Town for the nominal sum of One Dollar (\$1.00) upon dissolution of the Recovery Unit or should the Recovery Unit become insolvent and such reconveyance to the Town shall be free and clear of any and all liens, claims or encumbrances appearing on title subsequent to the conveyance to the Recovery Unit.
 - 3.2 To refrain from ever selling, conveying or leasing the lands unless the Town first consents in writing thereto.

- 3.3 (a) To provide the Town with a First Right of Refusal at a fixed consideration of One Dollar (\$1.00) should the Recovery Unit ever wish to dispose of the land.
- (b) Notwithstanding the provisions of Article 3.4 herein, at the time of execution of this agreement to provide to the Town an executed Transfer of the lands to it from the Recovery Unit, such Deed being held by the Town to be registered by the Town in the event that the Recovery Unit is deemed by the Town to have breached any terms of this agreement.
- 3.4 In the event the Recovery Unit reconveys the lands to the Town at any time, such lands shall be free of any environmental risks and/or hazards created as a result of the use of the lands by the Recovery Unit, or its invitees, licencees or contractees.
- 3.5 To pay all municipal taxes levied on the lands, if applicable and such taxes shall be paid annually and shall not be permitted to fall into tax arrears.
- 3.6 To refrain from mortgaging the lands without the express consent of the Municipal Council of the Town of Fort Erie.
- 3.7 To maintain the lands in a good state of repair.
- 3.8 To refrain from undertaking any structural changes or major renovations to the lands without the express consent of the Municipal Council of the Town of Fort Erie.
- 3.9 To at all times fully indemnify and save harmless the Town against all actions, suits, claims and demands whatsoever, which may be brought against or made upon the Town and from and against all losses, costs, damages, charges and expenses whatsoever which may be incurred, sustained or paid by the Town for or by reason of or on account of the conditional conveyance hereby granted to the Recovery Unit or the exercise by the Recovery Unit or such permission, or anything and any matter relating thereto. The Recovery Unit hereby grants to the Town full power and authority to settle any such action, suits, claims or demands on such terms as the Town may deem advisable. The Recovery Unit hereby further covenants and agrees with the Town to forthwith pay to the Town on demand all monies paid by the Town in pursuance of any such settlement and also such sum as shall represent the reasonable cost of the Town or its solicitors in defending or settling such action, suits, claims or demands on a solicitor and own client basis.
- 3.10 The Recovery Unit hereby further covenants and agrees with the Town not to bring any action, suit, claim and demand whatsoever against the Town in connection with any provision of this agreement.
4. That in the event the Recovery Unit breaches any term or condition of this agreement, the Town shall provide notice of same to the Recovery Unit and the Recovery Unit shall have Thirty (30) days to rectify the breached term or condition, failing which the Town may require the Recovery Unit to reconvey the lands forthwith.

5. That in the event notice is required to be given pursuant to the terms and conditions of this agreement, notice shall be given by registered mail or facsimile transmission as follows:

FORT ERIE UNDERWATER RECOVERY UNIT

Attention: Steve Brennan, President
 Address: 560 Niagara Boulevard
 Fort Erie, ON L2A 6V6

Telephone: 905-871-7752

CORPORATION OF THE TOWN OF FORT ERIE

Attention: Town Clerk
 Address: 1 Municipal Centre Drive
 Fort Erie, ON L2A 2S6

Telephone: 905-871-1600

Fax Number: 905-871-4022

6. That the conveyance of the lands and the registration of this agreement on the title to the lands shall be at the sole expense of the Recovery Unit.

IN WITNESS WHEREOF the Town has hereunto affixed its corporate seal duly attested by the hands of the proper signing officers in that behalf and the said signing officers certify that they have the authority to bind their corporation or association.

IN THE PRESENCE OF

) **FORT ERIE UNDERWATER**
) **RECOVERY UNIT**

)

)

WITNESS

Name: _____

) **Name:** _____

) **Title:** _____

)

)

WITNESS

Name: _____

) **Name:** _____

) **Title:** _____

)

) **THE CORPORATION OF THE TOWN OF**
) **FORT ERIE**

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) **Name: Wayne Redekop**

) **Title: Mayor**

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) **Name: Carolyn J. Kett**

) **Title: Town Clerk**