



The Municipal Corporation of the Town of Fort Erie

BY-LAW NO. 69-08

BEING A BY-LAW TO ESTABLISH A POLICY FOR PARKLAND DEDICATION OR PAYMENT OF CASH-IN-LIEU AS A CONDITION OF DEVELOPMENT OR REDEVELOPMENT

File No. 350204

WHEREAS Section 42(1) of the *Planning Act*, R.S.O. 1990, Chapter P.13, as amended (the "Act") provides that as a condition of development or redevelopment of land, the council of a local municipality may, by by-law applicable to the whole municipality or to any defined area or areas thereof, require that land in an amount not exceeding, in the case of land proposed for development or redevelopment for commercial or industrial purposes, two percent (2%) and in all other cases five percent (5%) of the land be conveyed to the municipality for park or other public recreational purposes, and

WHEREAS Section 42(6) of the Act provides that the council of a local municipality may require the payment of money to the value of the land otherwise required to be conveyed under this section in lieu of the conveyance, and

WHEREAS Section 42(6.4) of the Act provides that the value of the land shall be determined as of the day before the day the building permit is issued in respect of the development or redevelopment or, if more than one building permit is required for the development or redevelopment, as of the day before the day the first permit is issued, and

WHEREAS public recreational areas and parkland are deemed essential for the welfare of the residents, and it is therefore necessary and expedient to ensure adequate funding for the recreational and cultural needs of the Town; and

WHEREAS parkland conveyance provisions are set out in the Fort Erie Parks and Open Space Master Plan; and

WHEREAS the Fort Erie Parks and Open Space Master Plan shall be used as a guide to Council in its decisions regarding parks and recreational facilities; and

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

PART 1 - Definitions

1.1 In this by-law,

- (a) "**Act**" means the *Planning Act*, R.S.O. 1990 Chapter P.13 as amended, or replaced from time to time;
- (b) "**Applicant**" means a person who has made an Application for the development or redevelopment of land;
- (c) "**Appraisal**" means a fair market valuation of land prepared by an accredited Appraiser;

- (d) **"Appraiser"** means a member in good standing of the Appraisal Institute of Canada, holding an Accredited Appraiser Canadian Institute or Canadian Residential Appraiser designation as appropriate;
- (e) **"cash in lieu"** means the payment of money to the value of the land otherwise required to be conveyed in lieu of parkland dedication;
- (f) **"Council"** means the Municipal Council of the Town;
- (g) **"Cultural Heritage Lands"** means landscapes, structures and buildings, archeological sites, moveable heritage and intangible heritage as defined in the Official Plan;
- (h) **"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, and includes redevelopment;
- (i) **"Director"** means the Director of Community and Development Services of the Town, or designate;
- (j) **"domestic establishment"** means a single room or series of rooms of complementary use, operated under a single tenancy and operated as a housekeeping unit, used or intended to be used as a domicile by one or more persons and usually containing cooking, eating, living, sleeping and sanitary facilities;
- (k) **"dwelling unit"** means any part of a building or structure used, designed or intended to be used as a domestic establishment in which one or more persons may sleep and are provided with culinary and sanitary facilities for their exclusive use;
- (l) **"high density"** means more than 50 dwelling units per net hectare and permitting predominately such uses as apartment structures three storeys and above;
- (m) **"minor additions"** means the addition of less than 50% of the gross floor area of an existing development;
- (n) **"Natural Heritage Lands"** means Natural Heritage Features, Environmental Protection Areas, Environmental Conservation Areas, and Rehabilitation Areas as defined in the Official Plan;
- (o) **"number of units proposed"** means the total number of dwelling units proposed less any dwelling units that have been or will be demolished;
- (p) **"Official Plan"** means the Official Plan of the Town of Fort Erie in force and as amended or replaced from time to time;
- (q) **"parkland dedication"** means land required to be conveyed to the Town for park or other public recreational purposes;
- (r) **"Parks and Open Space Master Plan"** means the Parks and Open Space Master Plan of the Town of Fort Erie approved by Council on November 6, 2006;
- (s) **"redevelopment"** means the removal of a building or structure from land and the further development of the land or substantial renovation of a building or structure and a change in the character or density of the use in connection therewith.
- (t) **"residential use"** means that the predominant use of land shall be for dwelling units of varying densities;

- (u) “**Town**” means the Town of Fort Erie;
- (v) “**number of units proposed**” means the total number of dwelling units proposed less any dwelling units that have been or will be demolished;

PART 2 - Application and Administration of By-law

- 2.1 This By-law applies to all lands within the boundaries of the Town.
- 2.2 Public recreational areas and parkland are deemed essential for the welfare of the residents, and the requirements of the Parks and Open Space Master Plan is therefore to provide such areas at the rate of 5 hectares per 1,000 population.
- 2.3 Payment of cash in lieu of parkland dedication, or parkland dedication, pursuant to Sections 4.1 and 6.1 of this by-law, or a combination thereof (as may be determined in the sole discretion of the Director) are required as a condition of the following approvals for development or redevelopment:
 - a. the approval of site plans under section 41 of the *Act* on lots of record;
 - b. a conveyance of land to which a by-law passed under subsection 50(7) of the *Act* applies;
 - c. the approval of a plan of subdivision under section 51 of the *Act*;
 - d. a consent under section 53 of the *Act*;
 - e. the approval of a description under section 50 of the *Condominium Act* as amended or replaced from time to time; or
- 2.4 In accordance with Section 42(7) of the *Act*, if land has been conveyed or is required to be conveyed to the Town for park or other public recreational purposes or a payment of money in lieu of such conveyance has been received by the Town or is owing to it under this section or a condition imposed under Section 51.1 or 53, 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 unless,
 - a. there is a change in the proposed development or redevelopment which would increase the density of the development; or
 - b. land originally proposed for development or redevelopment for commercial or industrial purposes is now proposed for development or redevelopment for other purposes.
- 2.5 The Director, or designate is delegated authority to administer the provisions of this by-law.
- 2.6 This by-law shall be read and applied fairly with such variations as circumstances or the nature of the subject matter require provided the general purpose, intent, meaning and spirit of the by-law are maintained.
- 2.7 Nothing in this by-law shall be construed so as to fetter the discretion of the Director in determining whether to obtain parkland dedication by way of conveyance of land or cash in lieu.

PART 3 – Non-Application of By-law

- 3.1 Parkland dedication or payment of cash in lieu of parkland dedication shall not be required in the following situations:
- a. additions or alterations to existing individual residential units;
 - b. minor additions or alterations to existing commercial, industrial and other non-residential buildings;
 - c. the redevelopment of residential properties for replacement of residential uses that were demolished or destroyed by fire, accidental causes or other natural causes, provided that the density of the new development, in the discretion of the Director, is generally the same as the density which previously existed;
 - d. the redevelopment of commercial, industrial, or other non-residential properties that were demolished or destroyed by fire or other natural causes, provided these uses are replaced with similar non-residential, commercial, industrial or institutional uses, approved by the Director.
- 3.2 The provisions of this by-law shall not apply to the development or redevelopment of any land for which a building permit has been issued prior to the date of enactment of this by-law.

PART 4 – Parkland Dedication

- 4.1 The Town shall require the conveyance of land suitable for park or other public recreational purposes as a condition of the subdivision of land, development or redevelopment of land, pursuant to the *Act*. All conveyances shall be made in accordance with the criteria and standards set out in the Parks and Open Space Master Plan at the following rates:
- a. In the case of land proposed for development or redevelopment for commercial or industrial purposes, the required land conveyance shall be two percent (2%) of the land, and
 - b. In the case of land proposed for development or redevelopment for residential and all other purposes, the required land conveyance shall be five percent (5%) of the land, or at the rate of one (1) hectare of land for each 300 dwelling units proposed, whichever is greater.

PART 5 - Natural Heritage Lands

- 5.1 Environmental Protection Areas, as defined in the Official Plan, shall be gratuitously conveyed to the Town through the development review process and shall not be accepted by the Town as land for parkland dedication, nor included in the calculation thereof.
- 5.2 The Town, where appropriate and in compliance with the parkland dedication policies of the Parks and Open Space Master Plan, may consider Environmental Conservation Lands as defined in the Official Plan for parkland dedication where sufficient active parkland is already provided for the neighbourhood and/or community and where the lands are of

particular value either because of their physical, social or environmental character, or because their location provides a link with other portions of the open space system.

- 5.3 Where undevelopable or Natural Heritage Lands are to be conveyed to the Town, the parkland dedication shall be calculated based upon the net area of developable lands.
- 5.4 Waterfront lands designated as Environmental Protection Areas in the Official Plan shall be gratuitously conveyed to the Town through the development review process and shall not be accepted by the Town as parkland dedication, nor included in the calculation thereof.

PART 6 –Cash in Lieu of Parkland Dedication

- 6.1 The Town may require the payment of cash in lieu of parkland dedication by the Applicant under the following circumstances:
 - a. Where the required parkland dedication fails to provide an area of suitable shape, size or location for development of public parkland. Generally, a parcel of land may be considered to be of unsuitable size if its area is less than 0.5 hectare.
 - b. Where, using the guidelines established in the Parks and Open Space Master Plan, it is determined that the geographical area is well serviced with existing park and recreational facilities that are clearly adequate to serve the projected increase in population and no additional land requirements are needed.
 - c. Where, using the guidelines established in the Parks and Open Space Master Plan, funds are required to upgrade or expand existing parks or recreational facilities in the Neighbourhood Planning Area to meet the needs of the projected increase in population.
- 6.2 All lands conveyed to the Town for park or other public recreational purposes pursuant to this by-law shall be used for such purpose, but the Town may sell such lands at any time.
- 6.3 The Town may utilize any monies paid pursuant to Section 6.1 to acquire or develop land for park or other public recreational purposes in any area of the Town, which Council considers necessary or desirable.
- 6.4 Where a cash in lieu payment is required, the said payment shall be made no later than immediately prior to the issuance of the first Building Permit.

In accordance with the *Act*, the payment of cash in lieu shall be allocated to the Parkland Reserve Fund and shall be used for the sole purpose of park or other public recreational purposes in accordance with the *Act*. In the event that land is sold as provided for in Section 6.2, then the sale proceeds shall be allocated to the Parkland Reserve Fund.

PART 7 – Valuation Date

- 7.1 Pursuant to Section 42 of the *Act*, the value of land in respect of development or redevelopment shall be determined as of the day before the building permit is issued, or where more than one building permit is required, as of the day before the day the first building permit is issued.

PART 8 – Valuation Calculation

- 8.1 Where the Director requires payment of cash in lieu of parkland dedication, the valuation of the land shall be calculated as follows:
- a. For existing lots, site plan approval and all other development or redevelopment applications, save and except subdivisions and consent to sever applications, the Applicant shall provide a copy of the Transfer/Deed of Land to the property if the registration of the Transfer/Deed of Land occurred less than twelve (12) months from the date of the approved application, and the transaction was at arm's length and not for a nominal consideration. Otherwise, the Applicant shall be required to provide an Appraisal by a qualified Appraiser to determine the value of land;
 - b. For development or redevelopment of a subdivision and consent to sever applications, the Applicant shall be required to obtain an Appraisal of the lots and/or blocks prepared by a qualified Appraiser. The Appraisal shall be valid for a period of twelve (12) months, after which the Director may in his sole discretion require an updated Appraisal as of the valuation date.
 - c. Notwithstanding subsections a) and b) above, under no circumstances shall the cash in lieu payment be less than the amount identified in Column 1 of Schedule "A" annexed hereto and forming part of this by-law, nor greater than the amount identified in Column 2 of the said Schedule "A".
- 8.2 All fees associated with all required Appraisals shall be the sole responsibility of the Applicant.
- 8.3 The Director may, in his discretion, determine that an Appraisal is not acceptable, and may require the Applicant to obtain a revised or further Appraisal, at the Applicant's sole expense. The Director shall make the final determination as to the Appraisal to be utilized. In the event the Applicant is in disagreement with the Director's determination, the Applicant may make the payment under protest, in which case, Section 42 of the *Act* shall apply.


PART 9 - Short Title

- 9.1 The short title of this by-law will be the Parkland Dedication By-law.


PART 10 - Corrections

- 10.1 Pursuant to the provisions of Sections 23.1 to 23.5 inclusive of the Municipal Act, 2001, as amended, the Clerk of the Town of Fort Erie is hereby authorized to effect any minor modifications or corrections solely of an administrative, numerical, grammatical, semantical or descriptive nature or kind to this by-law or its schedules as such may be determined to be necessary after the passage of this by-law.

**READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 12TH
DAY OF MAY, 2008.**



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. 69-08 of the said Town. Given under my hand and the seal of the said Corporation this day of _____, 200 .

SCHEDULE "A"

COLUMN 1	COLUMN 2
(MINIMUM CASH IN LIEU PAYMENT)	(MAXIMUM CASH IN LIEU PAYMENT)
\$2,000.00 per lot or unit	5% of the value of the land otherwise required