

BY-LAW NUMBER 2009-XXX OF THE CITY OF ORILLIA

A BY-LAW TO PROVIDE FOR THE DEDICATION OF LAND FOR PARK PURPOSES OR CASH-IN-LIEU OF SUCH LAND, AS A CONDITION OF THE DEVELOPMENT OR REDEVELOPMENT OF LAND IN THE CITY OF ORILLIA.

WHEREAS the *Planning Act* authorizes Council, as a condition of Development or Redevelopment of land to require, by By-law applicable to the whole of the municipality or to any defined area or areas thereof, the conveyance to the municipality of land or cash-in-lieu for park or other public recreational purposes;

AND WHEREAS the *Planning Act* provides for an alternative method of calculating the parkland conveyance, at a rate of up to one hectare for each 300 Dwelling Units;

AND WHEREAS the *Planning Act* prohibits any additional conveyance of land or cash-in-lieu for park or other public recreational purposes in respect to land subject to an earlier conveyance or payment unless there is an increase in density or land originally developed for Commercial or Industrial purposes is proposed to be developed or redeveloped for other purposes;

AND WHEREAS the Official Plan for the City of Orillia contains approved policies concerning the conveyance of parkland as set out in the *Planning Act*;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF ORILLIA ENACTS AS FOLLOWS;

1. Definitions

In this By-law:

- a) "City" means the Corporation of the City of Orillia;
- b) "Council" means the Council of the City;
- c) "Commercial" means the use of land, buildings or structures for the purpose of buying and selling commodities and/or supplying services but shall not include bed and breakfast establishments, and home occupations.

- d) "Communal Housing" means the use of land, buildings or structures for the purpose of offering accommodation in either shared or private suites in a communal setting, together with services which may include shared kitchen/dining facilities, sanitary facilities, laundry facilities, amenities, and other facilities to the residents living therein. Without limiting the generality of the foregoing, Communal Housing may include the following uses as defined in the City's Zoning By-law: Nursing Homes, Homes for the Aged, Retirement Homes or Lodges, Boarding, Lodging or Rooming Houses, Student Residences, Continuum of Care Establishments and Senior Citizens' Home. Communal Housing is not comprised of independent Dwelling Units as defined by the City's Zoning By-law.
- e) "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 and shall include Temporary uses;
- f) "Dwelling Unit" shall be as defined by the City's General Zoning By-law.
- g) "Conversion" means the alteration or change of use of an existing building or structure to some other use or the alteration or change of an existing building or structure to create new Residential Dwelling Units or Communal Housing beds;
- h) "Environmental Lands" means valley land, being lands located below the top of bank as may be defined but shall not include any buffer land beyond the top of bank, provincially significant lands including Areas of Natural or Scientific Interest (ANSI), Wetlands and Environmentally Significant Areas (ESA).
- i) "Gross Land Area" means the total area of all lands contained in the Development or Redevelopment application.
- j) "Industrial" use means the use of land, buildings or structures for research and development, manufacturing, processing, fabrication, assembly, transporting, warehousing or distributing raw materials or goods, which may include an ancillary Commercial use.
- k) "Institutional" use means the use of land, buildings or structures for religious, charitable, educational, benevolent, health or welfare purposes by a non-profit organization, group, society, organized body, or association including, but not limited to, schools, colleges or

universities, places of worship, cemeteries, hospitals, and government buildings.

- l) "Mixed-Use" means the use of land, buildings or structures intended and designed to contain both Residential and non-residential uses in one building.
- m) "Net Land Area" means the "Gross Land Area" minus any stormwater management facilities to be conveyed to the City and any "Environmental Lands".
- n) "Redevelopment" means the removal of buildings or structures from land and further Development on the land, or the substantial renovation of a building or structure and a change in the character or density of use in connection therewith but shall not include a change of occupancy;
- o) "Replacement" means to take the place of, substitute or put back in place a building or structure.
- p) "Residential" use means the use of land, buildings, or structures or parts thereof as a Dwelling Unit but does not include Communal Housing.
- q) "Temporary" use means the use of land, buildings or structures of any kind whatsoever or any portion thereof, used, designed or intended to be used for a period not exceeding three (3) years.
- r) "Waterfront Residential" means a Residential lot which abuts a lake, river, canal, or lagoon.

## 2 Areas And Uses Which Are Exempt.

- i) General Land Uses. Exempted land uses city-wide are as follows:
  - a) Conversion of an existing Residential dwelling/building for Commercial or Industrial purposes

- ii) Specific Areas or Lots Exempted by Amendment to this By-law

## 3. Development or Redevelopment

Section 42 of the *Planning Act*, or its successor, provides for the requirement of an owner to convey to the City land for park or other public recreational purposes. The determination of the taking of land shall be made by Council unless land is

identified or described in the City's Official Plan as future parkland, urban square or trail. The following shall apply in regard to this requirement:

- a) Residential Development or Redevelopment shall provide a dedication of land in the amount of five percent (5%) of the Net Land Area to be developed or redeveloped;
- b) Residential Development or Redevelopment proposing a density of 20 or more units per hectare inclusive, shall provide a dedication of land at a rate of 1.0 hectare for each 300 Dwelling Units proposed or five percent (5%) of the Net Land Area proposed for Development or Redevelopment, whichever is greater;
- d) Communal Housing and Institutional Development or Redevelopment shall provide a dedication of land in the amount of five percent (5%) of the Net Land Area to be developed or redeveloped;
- e) Commercial and Industrial Development or Redevelopment shall provide a dedication of land in the amount of two percent (2%) of the Net Land Area to be developed or redeveloped.
- f) Residential and Communal Housing Redevelopments which increase the number of Dwelling Units or Communal Housing beds, legally in existence prior to such Redevelopment, shall provide for a dedication based on the number of new units/beds as set out elsewhere in this By-law.
- g) For Redevelopment, addition, expansion, or extension of an existing Industrial, Commercial, or Institutional Development the required conveyance of land shall be determined by calculating the Net Land Area necessary only for that portion of the Redevelopment, addition, expansion, extension and its associated parking.
- h) Title for the land is to be conveyed to the City prior to the issuance of any building permit for the proposed Development or Redevelopment.

#### 4. Cash-in-lieu of Parkland

- a) At the sole discretion of the Director of Planning and Development or their designate, a payment of money, in lieu of the conveyance of land for park purposes referred to in Section 3 above, may be required equal to the value of the subject land or as set out

elsewhere in this By-law. Consideration may also be given to acceptance of a combination of land and cash-in-lieu.

- b) Where a cash-in-lieu payment is required, the payment shall be made prior to the issuance of the building permit concerning the Development or Redevelopment of the subject property.
- c) Where a cash-in-lieu payment is required, the value of the land shall be determined as of the day before the day of the issuance of the building permit concerning the Development or Redevelopment of the subject property or in the amounts set out elsewhere in this By-law. Where more than one building permit is required for the property the date of payment shall be the day of the issuance of the first building permit.
- d) The calculation of the fair market value of a property shall not include development charges/credits which may otherwise be applicable.

#### 5. Determination of Valuation Criteria and Appeal

Where a cash-in-lieu contribution is required the following guidelines shall apply in addition to any other requirements of this By-law;

- a) The cash-in-lieu amount is determined in regard to the value of the land only. The land to be valued should be treated as vacant and with no on-site improvements or buildings.
- b) The City will retain an accredited real-estate appraiser's opinion of value, at the expense of the applicant, to determine the value of the land. The applicant will be required to post a deposit for the opinion of value. In the event of a dispute with respect to the value of land established by the opinion of value, an appeal to Council may be allowed and Council's decision shall be final. The appellant shall be required to submit their appeal in the form required by the City, together with a second, independent accredited real-estate appraiser's opinion of value and an appeal fee.
- c) As an alternative to the requirement of an opinion of value for the valuation of the subject lands, the City may also accept the purchase price of the subject lands as a determinant of the land value provide the purchase occurred within the last 12 months, the subject lands are vacant and appropriately zoned for the proposed Development or Redevelopment, and the applicant can demonstrate to the City that the purchase was an arms-length, *bonafide* sale.

- d) As an alternative to 5(b) and 5(c), the values set out in Appendix "A", attached hereto, shall be applied in the calculation of cash-in-lieu payment and furthermore Appendix "A" shall be reviewed and revised in accordance with MPAC's vacant land assessment as it becomes available. The values set out in Appendix "A" shall only be applied to new, stand-alone Residential Developments with ten (10) or fewer Dwelling Units.
- e) Where a previous cash payment has been made for a Residential or Communal Housing use and an increase in density is proposed the amount owing is based on the increase in Dwelling Units or Communal Housing beds and the calculations of Appendix "A" shall apply.
- f) Where a Redevelopment, addition, expansion, or extension of an existing Commercial, Industrial, or Institutional Development is proposed, the values set out in Appendix "A", attached hereto, shall be determined by applying the Net Land Area necessary only for that portion of the Redevelopment, addition, expansion, or extension and its associated parking.
- g) Where a new Mixed-Use Development or Redevelopment is proposed, the values set out in Appendix "A", attached hereto, shall be applied in the calculations of cash-in-lieu payment. For the non-residential portion of the Mixed-Use Development or Redevelopment, the values shall be determined by applying the Net Land Area necessary only for the non-residential / non-Communal Housing portion of the Development or Redevelopment and its associated parking and by applying the per unit/bed fee to the Residential / Communal Housing portion of the Development or Redevelopment.
- h) Where existing Commercial, Industrial, or Institutional buildings are to be converted to another use no credit for previous payment shall be made. The applicant may appeal to Council if they feel a credit should be allowed.
- i) Where there is a claim of previous payment it is the applicant's responsibility to provide suitable evidence of this payment.

## 6. Conveyance of Land

- a) Where Council determines that land is to be provided, the location and shape of the lands to be conveyed will be determined by the Director of Planning & Development or their designate. In the event of a dispute the applicant may appeal to Council for a final decision. Land conveyed to the City for park purposes shall be conveyed in a

condition satisfactory to the City, bearing the full depth of its original topsoil, being free of construction debris, unconsolidated fill or other refuse, and being fenced and sodded to the satisfaction of the City. Where it has been determined by the City that the lands to be conveyed have been physically disturbed either by the dumping of construction debris, unconsolidated fill or other refuse, or by the stripping of topsoil, or by any other means, the owner shall be responsible for restoring the land to a condition satisfactory to the City. Any conveyance shall be free and clear of any encumbrances and the associated legal and administrative costs, if any, shall be the responsibility of the transferor;

- b) Environmental Lands, as defined herein, stormwater management facilities or other similar areas shall not be considered as part of any conveyance for parkland or other recreational facilities.

7. Effective Date of Applications

The provisions of this By-law shall take effect and will apply in regard to the following;

- a) For applications for site plans and building permits which have not been given approval by the City prior to the enactment of this By-law.

8. Administration

- a) The administration of this By-law and the determination of the application of this By-law shall be made by the Director of Planning and Development or their designate. In the event of a dispute an appeal to Council may be allowed and Council's decision shall be final. The appellant shall submit their appeal in the form required by the City together with an appeal fee as set out in the City's Municipal Code.

- b) The exemption of specific areas or lots from the requirements to convey land or cash-in-lieu for park purposes will require an amendment to this By-law. The applicant shall submit their request in the form required by the City together with an amendment fee as set out in the City's Municipal Code.

9. Effective Date

10. By-laws repealed

- 1. The following by-laws are hereby repealed;

- a) By-law 1991-86;
- b) By-law 2000-153.

BY-LAW read a first, second, and third time and finally passed on this XX day of XXXXXXXX 2009

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**MAYOR**

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**CLERK**

DRAFT

**Appendix A to Section 5(d), (e) and (f) of By-law 2009-XXX:  
Cash-in-lieu Schedule**

As an alternative to the requirement of an appraisal for the valuation of the subject property, cash-in-lieu payment in accordance with the following schedule may be made:

**i) Residential Dwelling Units**

- a) Non-waterfront \$750 per unit
- b) Waterfront \$1,500 per unit
- c) New waterfront & non-waterfront stand-alone residential developments with more than 10 Dwelling Units will be subject to the requirements of Section 5(b) or 5(c) of the By-law attached hereto.

**ii) Residential Communal Housing Beds**

- a) Non-waterfront \$225 per bed
- b) Waterfront \$450 per bed

**iii) Commercial**

- a) Area of land less than 4047m<sup>2</sup> (1 acre) land area \$1.93 per m<sup>2</sup> of
- b) Area of land greater than 4047m<sup>2</sup> (> 1 acre) but less than 20,235m<sup>2</sup> (< 5 acres) \$0.97 per m<sup>2</sup> of land area
- c) Area of land greater than 20,235m<sup>2</sup> (> 5 acres) will be subject to the requirements of Section 5(b) or 5(c) of the By-law attached hereto.

**iv) Industrial**

- a) Area of land less than 4047m<sup>2</sup> (1 acre) land area \$0.86 per m<sup>2</sup> of
- b) Area of land greater than 4047m<sup>2</sup> (> 1 acre) but less than 20,235m<sup>2</sup> (< 5 acres) \$0.32 per m<sup>2</sup> of land area
- c) Area of land greater than 20,235m<sup>2</sup> (> 5 acres) will be subject to the requirements of Section 5(b) or 5(c) of the By-law attached hereto.

**v) Institutional**

- a) Area of land less than 20,235m<sup>2</sup> (< 5 acres) land area \$2.69 per m<sup>2</sup> of
- c) Area of land greater than 20,235m<sup>2</sup> (> 5 acres) will be subject to the requirements of Section 5(b) or 5(c) of the By-law attached hereto.

Effective Date: **Date By-law is Passed**

## **Draft Parkland Dedication By-law: Frequently Asked Questions**

### **1. What is a Parkland Dedication By-law?**

The *Planning Act* allows the City to collect land or to accept a cash payment in lieu of the dedication of land (i.e. cash-in-lieu) for park purposes for residential and non-residential developments and redevelopments that require a building permit provided the City has a Parkland Dedication By-law in effect.

### **2. Does the City already have a Parkland Dedication By-law?**

Yes. This By-law was passed in 1991 and it allows the collection of land or cash-in-lieu for new residential developments with more than four units and new commercial development on the waterfront. The following land uses are exempt from the City's existing By-law:

- Industrial uses;
- Commercial uses not on Lake Simcoe or Couchiching;
- Government uses;
- Institutional uses (such as student residences, retirement homes, non-profit organizations, churches etc);
- Residential development with fewer than 4 dwelling units

### **3. Why is the City updating its Parkland Dedication By-law?**

Council adopted the City's Corporate Plan for the 2006-2010 Council Term and one of the goals in that Plan is to review and update the City's cash-in-lieu of parkland policy.

### **4. What land uses will be exempt from the Draft Parkland Dedication By-law?**

None. On September 21, 2009 Council directed staff to prepare a By-law that will collect parkland or cash payments in lieu of parkland for all land uses requiring a building permit.

However, Council may consider amending the By-law on a site-specific basis to grant an exemption from the By-law for a specific development or redevelopment. There will be an application form and amendment fee that must be submitted before Council will consider an amendment to the By-law. A request to amend the By-law could take several weeks (possibly months) to be processed and reviewed by the City and Council.

**5. Do I have to make a parkland contribution if I apply for a building permit for an addition on my house or to build a new garage?**

No. For residential development, the By-law can only be applied when there is an increase in density. A parkland contribution will be required if more residential units are added to an existing building or a new residential building is proposed.

**6. I own a vacant residential lot in a Registered Plan of Subdivision and I intend to build a Single Detached Dwelling, will I have to make a parkland contribution?**

If the developer of the subdivision provided the City with a parkland contribution at the time the subdivision was developed, then no further parkland contribution is required.

**7. What is cash-in-lieu? How much money do I have to pay?**

The *Planning Act* requires that up to 2% of the land be dedicated to the City for park purposes for commercial or industrial development or redevelopment, and up to 5% of the land be dedicated to the City for park purposes for other uses. Cash-in-lieu is when money, instead of land, is taken which is equal to 2% of the value of land for commercial and industrial uses and 5% of the value of land for all other uses.

**8. What is the money used for?**

Revenue collected from a Parkland Dedication By-law may only be used for park purposes. It may be used to acquire land for parks or trails and may also be used to finance the development and maintenance of parks.

**9. How do I calculate my land value?**

The *Planning Act* states that land value is determined as the value of land the day before the first building permit is issued. This is vacant, improved, and zoned land. The Draft By-law allows land value to be determined one of three possible ways:

1. Opinion of Value (paid for by the applicant) undertaken by the City's appraiser.
2. Recent Purchase Price provided the sale was bonafide and occurred within the last 12 months and the land is vacant and zoned for the proposed development.
3. Fee Per Unit for new residential developments with more than 10 units; Fee Per Bed for Communal Housing developments; and Price per Square Metre of land area for industrial, commercial and institutional developments may be

applied. These rates have been established by an appraiser and are contained in Appendix "A" of the Draft By-law.

**10. What is a Fee Per Unit? What if I want to install 3 residential dwelling units above my commercial building on Mississaga Street West, how much would I have to pay?**

A Fee Per Unit is equivalent to 5% of the value of land associated with a new residential unit. It is an average value based on an appraisal of Multi-Residential land values in the City of Orillia as of October 2009. Please see the attached Appendix "A" for the specific Fee Per Unit for residential development. The Fee Per Unit is greater for residential developments on the waterfront to reflect the increased value of waterfront land.

The Fee Per Unit is \$750 per non-waterfront residential unit. As an example, for three new residential units, you would be required to pay \$2,250 for the parkland contribution.

**11. What is the Fee Per Bed for Communal Housing? If I plan to build at 20 bed Nursing Home on the waterfront, how much would I have to pay?**

The Fee Per Bed for Communal Housing is based on the appraisal of Multi-Residential land values in the City of Orillia as of October 2009. The Fee Per Bed is one-third of the Fee Per Unit for Residential Dwelling Units because the average household size in Orillia is 2.9 persons per household.

The Fee Per Bed is greater for Communal Housing developments on the waterfront to reflect the increased value of waterfront land. The Fee Per Bed on the waterfront is \$450 per bed. For a 20-bed Nursing Home, you would be required to pay \$9000 for the parkland contribution.

**12. What is Price Per Square Metre? I plan on demolishing and replacing my existing commercial building with a new commercial building on my property that is ½ acre in size, how much would I have to pay?**

A Price Per Square Metre for commercial and industrial developments is equivalent to 2% of the value of land. The Price Per Square Metre for institutional developments is equivalent to 5% of the value of land. It is an average value based on an appraisal of commercial, industrial and commercial land in the City of Orillia as of October 2009. Please see the attached Appendix "A" for the specific Price Per Square Metre for commercial, industrial and institutional uses.

The Price Per Square Metre for a commercial building on a parcel of land less than 1 acre in size is \$1.93 per m<sup>2</sup>. To replace a commercial building on a ½ acre parcel of land, you would be required to pay \$3905.36 for the parkland contribution.

**13. Under the Draft By-law, if I were to expand my existing commercial business, would I have to make a parkland contribution?**

Yes. Since no land uses are proposed to be exempt from the Draft By-law, any addition to an existing industrial, commercial or institutional building would be required to make a parkland contribution. The amount of the parkland contribution will be based on the value of land associated with the addition including any related parking.

**14. Under the Draft By-law, if our church builds an addition and expands our parking area and this work will take up ¼ acre of our property, is a parkland contribution required?**

Since a church is an institutional use as defined under the Draft By-law, cash-in-lieu is payable prior to issuance of the addition's building permit. The Price Per Square Metre for an institutional building on land less than 5 acres in size is \$2.69 per m<sup>2</sup>. To expand the church for this ¼ acre addition, you would be required to pay \$2,721.61 for parkland contribution.

**15. Under the Draft By-law, are new schools and students residences required to make a parkland contribution?**

Yes. However, if the applicant is the Province of Ontario or the applicant is able to prove that they are a "Crown Agency" (as defined under the Crown Agencies Act), then the applicant could refuse to make a parkland contribution because the Province of Ontario is not bound by the *Planning Act*.

**16. I plan to build a new mixed-use building in the Downtown on my 2.5 acre parcel of land with 12 apartments on the 2<sup>nd</sup> and 3<sup>rd</sup> floors and commercial on the ground floor, how much do I have to pay for my parkland contribution?**

Parking for the 12 apartments will take up 0.1 acres of the property. Therefore, the remaining 2.4 acres will be used to calculate the cash-in-lieu for the commercial component of the development. The Price Per Square Metre for a commercial development on land less than 5 acres in size is \$0.97 per m<sup>2</sup>. This would amount to \$9421.41 for the commercial development plus the residential component of the development (12 units x \$750 = \$9,000). A total of \$18,421.41 would be required for the parkland contribution for the new mixed-use building.

**17. I recently purchased an industrial building and I plan to convert it to a residential apartment building, will I receive a credit for a previous parkland contribution?**

Since the City's existing Parkland Dedication By-law (circa 1991) did not allow for the collection of parkland dedication for industrial uses, it is unlikely that a previous parkland contribution for the industrial building was ever made and therefore a credit

will not be given. If you are able to prove that a previous parkland contribution was made, then you may appeal to Council to request a credit.

**18. What if my industrial lands are greater than 5 acres in size and I've owned the land for several years, how do I go about getting an opinion of value?**

For industrial, commercial and institutional developments on lands greater than 5 acres, the Price Per Square Metre is not applicable. In this scenario, an opinion of value is required because the land wasn't purchased in the last 12 months.

The Draft By-law requires the opinion of value to be prepared by the City's accredited real-estate appraiser. Since you will be required to pay for this opinion of value, you must pay a deposit to the City before the opinion of value is undertaken.

If you disagree with the City's opinion of value, you may appeal to Council and Council's decision is final. As part of this appeal process, you must also have your own independent opinion of value prepared. In addition to this second opinion of value, there will also be an appeal form and appeal fee that must be submitted before Council can consider an appeal.

**19. What if I disagree with the City's decision to take land, instead of cash-in-lieu?**

In the event of a dispute, you may appeal to Council and Council's decision is final. There will be an appeal form, together with an appeal fee, that must be submitted before Council can consider an appeal.

**20. I thought that a Parkland Dedication By-law only applied to applications requiring Site Plan Approval?**

The Planning Act enables the Parkland Dedication By-law to be applied to any development or redevelopment requiring a building permit.

**21. When will this By-law come into effect?**

It is anticipated that Council will consider adopting the Draft By-law early in the New Year (2010). Building permits issued after the By-law is passed by Council will be subject to the New By-law.

**22. What if I want to object to the Draft By-law, how do I express my concerns?**

Attend the Public Meeting on Wednesday, November 25, 2009 to learn more about the Draft By-law. Following the Public Meeting, the City will be accepting written comments on the Draft By-law until Wednesday, December 23, 2009. In January 2010, the Draft By-law together with a staff report, including a summary of the written comments received, will be presented to Council for consideration.