

# The Corporation of the Town of Pelham

By-law No. 3621(2015)

## **Being a By-law to Enact a New Parkland Dedication By-law and to Repeal By-law No. 2682(2005)**

**WHEREAS** section 42 of the *Planning Act*, R.S.O. 1990, Chapter P.13, as amended, 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 of the 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 to be conveyed to the municipality for park or other public recreational purposes;

**AND WHEREAS** section 51.1 of the *Planning Act*, R.S.O. 1990, Chapter P. 13, as amended, provides that the approval authority may impose as a condition of the approval of a plan of subdivision that land in an amount not exceeding, in the case of a subdivision proposed for commercial and industrial purposes, 2 percent (2%) and in all other cases 5 percent (5%) of the land included in the plan shall be conveyed to the local municipality for park or other public recreational purposes or, if the land is not in a municipality, shall be dedicated for park or other public recreational purposes;

**AND WHEREAS** section 53 of the *Planning Act*, R.S.O. 1990, Chapter P.13, as amended, provides that a Council may impose, as a condition of the giving of a provisional consent, that land be conveyed to the municipality for park or other public recreational purposes, such land not to exceed, in the case of land proposed to be severed for Commercial or Industrial purposes 2 percent (2%), and in all other cases 5 percent (5%);

**AND WHEREAS** in the case of land proposed for development or redevelopment for residential purposes, pursuant to subsection 42(3) of the *Planning Act*, R.S.O. 1990, Chapter P.13, as amended, a municipality may require that such land be conveyed at the rate of up to one hectare for each 300 Dwelling Units, provided that the municipality has specific policies dealing with the provision of lands for park or other public recreational purposes, and the use of this alternative requirement is included within its Official Plan;

**AND WHEREAS** the Council of The Corporation of the Town of Pelham wishes to use the provisions of the *Planning Act*, R.S.O. 1990, Chapter P.13, as amended, for the purposes of acquiring and providing parkland for the use and enjoyment of the residents of the Town of Pelham;

**AND WHEREAS** the Council of the Corporation of the Town of Pelham

deems it necessary and expedient to establish policies to ensure adequate resources for the recreational and cultural needs of the Town of Pelham that may be attributable to new development;

**AND WHEREAS** the Council of the Corporation of the Town of Pelham deems it necessary and expedient to establish policies to ensure adequate resources for the recreational and cultural needs of the Town of Pelham that may be attributable to new development;

**AND WHEREAS** the Official Plan for the Corporation of the Town of Pelham contains approved policies regarding the requirements for the conveyance of land for park or other recreational purposes;

**AND WHEREAS** the Council of the Corporation of the Town of Pelham desires to repeal and replace By-law No. 2682 (2005);

**NOW THEREFORE** Council of the Corporation of the Town of Pelham Enacts as Follows:

#### 1. Purpose

The purpose of this By-law is to accomplish the following objectives:

- a) Ensure that lands are dedicated for park purposes as a result of the development of land in the Town;
- b) Ensure that when dedication is not required, cash-in-lieu of land for park purposes is paid to the Town as a result of the development of land; and
- c) Ensure the provision of guidelines directing Staff in carrying out the provisions of this By-law in a responsible and timely manner.

#### 2. Definitions

In this By-law:

**"Building Permit"** means an application for a building permit issued by the Chief Building Official of the Corporation of the Town of Pelham approving an application for the construction, reconstruction or alteration of any building or structure for which such permit is required pursuant to the provisions of the Building Code Act, S.O. 1992, c.23, as amended, or any successor thereto and the Town's Building By-law No. 2686 (2005), as amended, being a by-law to implement and enforce the Building Code Act as amended, or any successor thereto.

**"Chief Building Official"** means the Chief Building Official as appointed by by-law of the Council of the Corporation of the Town of Pelham.

**“Consent to Sever Application”** means an application for consent pursuant to the provisions of Section 53 of the *Planning Act*, or any successor thereto.

**“Council”** means the Council of the Corporation of the Town of Pelham.

**“Development/Redevelopment”** shall mean the construction, erection or placing of one or more buildings or structures on a lot or the making of an addition or alteration to a building or structure that has the effect of increasing the size or usability thereof.

**“Director of Community Planning & Development”** means the Director of Community Planning & Development of the Corporation of the Town of Pelham.

**“Lot”** means an existing parcel of land or a parcel of land created by Consent to Sever or registered Plan of Subdivision in accordance with the provisions of the *Planning Act*, or any successor thereto.

**“Plan of Subdivision Application”** means an application for a plan of subdivision pursuant to the provisions of Section 51 of the *Planning Act*, or any successor thereto.

**“Qualified Appraiser”** means a member of the Appraisal Institute of Canada in good standing.

**“Site Plan Application”** means an application for Site Plan Approval pursuant to the provisions of Section 41 of the *Planning Act*, or any successor thereto.

**“Substantial increase to the size or usability of a Building or Structure”** means to provide more than the existing number of residential units in the case of any lot used for residential purposes or more than double the gross floor area of any building or structure on the lot to be used for non-residential purposes.

**“Town”** means the Corporation of the Town of Pelham.

**“Zoning By-law Amendment Application”** means an application to amend Town of Pelham Zoning By-law No. 1136 (1987), as amended, pursuant to the provisions of Section 34 of the *Planning Act*, or any successor thereto.

### 3. General Policies

3.1. The provisions of this By-law are applicable to all land under the jurisdiction of the Corporation of the Town of Pelham;

3.2. Parkland dedication or cash-in-lieu thereof is required pursuant to the provisions of Section 42 of the *Planning Act*, or any successor

thereto, as a condition of development or redevelopment of lands within the Town, in the amount of two per cent (2%) for commercial or industrial and five per cent (5%) in all other cases. Alternatively, for residential development proposals, Council may require land to be conveyed for park or other public recreational purposes at a rate of up to one (1) hectare for each 300 dwelling units proposed. In lieu of the above requirement, Council may require cash-in-lieu of parkland instead, as deemed appropriate;

- 3.3. The Town may require the dedication of land for park purposes where the location of the parkland has been determined in accordance with the policies of the Town of Pelham Official Plan. All parkland acquisition in excess of five per cent (5%) or one (1) hectare for each 300 dwelling units shall be at a price negotiated with the Owner and shall be subject to the approval of Council;
- 3.4. The Town shall require cash-in-lieu of the dedication of land for park purposes where lands are not required for park purposes;
- 3.5. The Town's policies with respect to the requirements for cash-in-lieu of the dedication of land for park purposes are as stated in the Town's Official Plan. The requirements are as set out in this By-law;
- 3.6. Where reference is made in this By-law to appraisals, a letter of opinion from a qualified appraiser shall be acceptable; and
- 3.7. The provisions of this By-law do not apply where owners apply to the Corporation of the Town of Pelham for a building permit relating to development or redevelopment of lands by way of structural improvement, repair, replacement or enlargement of buildings or structures already located on lands if the effect of such structural improvement, repair, replacement or enlargement do not substantially increase the size or usability of one or more buildings on the lands and for the purpose of this By-law, the words "substantially increase the size or usability" shall mean to provide more than the existing number of residential units in the case of residential land use or more than double the gross floor area of any structure on lands to be used for non-residential purposes.

#### 4. Detailed Policies

The dedication and acquisition of parkland as well as the collection of cash-in-lieu thereof shall be required as follows:

##### 4.1. Existing Vacant Lots

The Town may at its sole discretion accept the dedication of land for existing vacant lots, but will require cash-in-lieu of parkland when land is not dedicated. Such payment shall be required

pursuant to the provisions of Section 42 of the Planning Act prior to the issuance of any Building Permit for the vacant lot.

Where lands are vacant agricultural lands designated and/or zoned for agricultural purposes, the appraisal will be based on the first 0.4 hectares (1 acre) of the lands. No cash-in-lieu payment is required on vacant lands for Building Permits for agricultural purposes including barns, silos, greenhouses, storage buildings and accessory equipment, but excluding a building used for residential purposes.

#### 4.2. Consent to Sever Applications

Concerning lots resulting from applications for Consent to Sever, the Town will not accept land but will require cash-in-lieu of the dedication of land for park purposes. Said payment shall be required pursuant to the provisions of Sections 42 and 53 of the Planning Act prior to the issuance of a Building Permit. The Planning Services Department shall advise the Committee of Adjustment upon circulation that the Town requires payment of cash-in-lieu of the dedication of land pursuant to the provisions of Section 42 of the Planning Act, upon the issuance of any Building Permit for either the severed or retained parcel whichever, is the vacant lot. Planning Services Staff will further request the Committee of Adjustment to impose the following condition of approval:

“That the applicant(s) sign the Town of Pelham’s standard “Memorandum of Understanding” explaining that development charges and cash-in-lieu of the dedication of land for park purposes are required prior the issuance of a Building Permit.”

The purpose of the “Memorandum of Understanding” is to advise the applicant that cash-in-lieu of the dedication of land is required prior the issuance of a Building Permit and to ensure that if the applicant sells the lot, that the applicant (vendor) informs the purchaser of the requirement to pay cash-in-lieu of the dedication of land prior to the issuance of a Building Permit.

#### 4.3. Plan of Subdivision Application

During the review of the application for draft plan approval, the Planning Services Department shall review the plan with the policies of the Town of Pelham Official Plan to determine if lands have been identified for parkland acquisition. Where the Town identifies that lands are required for acquisition, the Planning Services Department shall ensure that the following condition of draft plan approval is included in the Recommendation report to the Committee of the Whole or Council:

“Pursuant to the provisions of the Planning Act, that the Owner convey Block/Lot \_\_\_\_ to the Town for park purposes.”

In some instances, it will be necessary for the applicant to convey lands in excess of the two percent (2%), five percent (5%) or one (1) hectare for each 300 dwelling units requirement where lands have been identified for parkland acquisition. Where lands are in excess of the dedication requirement, the Planning Services Department shall ensure that the following condition of draft plan approval is included in the Recommendation report to the Committee of the Whole or Council:

“Pursuant to the provisions of the Planning Act, that the Owner convey Block/Lot \_\_\_ to the Town for park purposes and that the Town negotiate with the Owner the value of those lands in excess of the required park dedication requirements of the Planning Act.”

Where lands have not been identified for acquisition by the Town for park purposes, the Town shall require cash-in-lieu of the dedication. In such circumstances, the Planning Services Department shall ensure that the following condition of draft plan approval is included in the Recommendation report to the Committee of the Whole or Council:

“That the Owner agrees in the Agreement to pay cash-in-lieu of land for park purposes for each lot and/or block prior to the issuance of a Building Permit pursuant to Section 42 of the Planning Act, R.S.O. 1990.”

#### 4.4. Site Plan Application

With respect to applications for Site Plan Approval, the Town will require parkland and/or cash-in-lieu of the required dedication of land in accordance with the provisions of Section 42 of the Planning Act prior to the issuance of any Building Permit for the development.

The Planning Services Department shall include the following clause in the Site Plan Agreement:

“The Owner acknowledges and agrees that neither the Owner, or any person under its authority shall be entitled to the issuance of any Building Permit to construct any building or structure contemplated by this Agreement and that the Town shall be under no obligation to issue a Building Permit on the Lands until the required cash-in-lieu of land or land for park purposes has

been paid or dedicated to the Town.”

#### 4.5. Zoning By-law Amendment Application

With respect to applications for Zoning By-law Amendment, the Town will require cash-in-lieu of the dedication of land in accordance with the provisions of Section 42 of the Planning Act prior to the issuance of any Building Permit.

Planning Services Staff will further advise the Committee of the Whole or Council in the Recommendation report to impose the following condition of approval:

“That the applicant(s) sign the Town of Pelham’s standard “Memorandum of Understanding” which explains that the development charges and cash-in-lieu of the dedication of land for park purposes are required prior the issuance of a Building Permit.”

The purpose of the “Memorandum of Understanding” is to advise the applicant that cash-in-lieu of the dedication of land for park purposes are required prior the issuance of a Building Permit and to ensure that if the applicant sells the lot, that the applicant (vendor) shall inform the purchaser of the requirement to pay cash-in-lieu of the dedication of land for park purposes prior to the issuance of a Building Permit.

### 5. Process to Determine Land Values and Collection of Cash-In-Lieu of Lands for Park Purposes

#### 5.1. Existing Lots

Upon receiving an application for a Building Permit, the Chief Building Official shall request the owner to provide a copy of the deed to the property where the lands have been recently purchased and the registration of the deed occurred less than twelve (12) months from the application for Building Permit. In all other cases, the applicant will be advised by the Planning Services Director that an appraisal is required, wherein the value is to be determined as of the day before the day of issuance of a Building Permit. Upon receipt of the required appraisal, the Director of Community Planning & Development shall advise the Chief Building Official of the required cash-in-lieu payment and the Chief Building Official will collect the cash-in-lieu payment prior to the issuance of the Building Permit. The Chief Building Official shall not issue a Building Permit until all required cash-in-lieu fees are collected as per the conditions of development approval.

Where lands are vacant agricultural lands designated and/or zoned for agricultural purposes, the appraisal will be based on the first 0.4

hectares (1 acre) of the lands. No cash-in-lieu payment is required on vacant lands for Building Permits for agricultural purposes including barns, silos, greenhouses, storage buildings and accessory equipment, but excluding a building used for residential purposes.

## 5.2. Consent to Sever

Upon receiving an application for a Building Permit, the Chief Building Official shall request the owner to provide a copy of the deed to the property where the lands have been recently purchased and the registration of the deed occurred less than twelve (12) months from the application for Building Permit. In all other cases, the applicant will be advised by the Planning Services Director that an appraisal is required, wherein the value is to be determined as of the day before the day of issuance of a Building Permit. Upon receipt of the required appraisal, the Director of Community Planning & Development shall advise the Chief Building Official of the required cash-in-lieu payment and the Chief Building Official will collect the cash-in-lieu payment prior to the issuance of the Building Permit. The Chief Building Official shall not issue a Building Permit until all required cash-in-lieu fees are collected.

## 5.3. Plan of Subdivision Applications

Where lands are to be dedicated to the Town for park purposes, the dedication of land for park purposes shall be required by the subdivision agreement and shall be conveyed to the Town upon registration of the Plan of Subdivision.

Where lands are to be dedicated to the Town for park purposes, and the lands to be dedicated are in excess of the dedication amount required, the dedication of land for park purposes shall be required by the subdivision agreement and shall be conveyed to the Town upon registration of the Plan of Subdivision. At such time as the subdivision agreement is prepared, the Planning Services Department will acquire the necessary appraisal from a qualified appraiser. The appraisal shall establish the acquisition price for the lands in excess of the dedication requirement (which is subject to negotiation and the approval of Council). The payment to the owner for any over dedication shall be made upon registration of the Plan of Subdivision and the sale of the lands to the Town or other agreed upon settlement.

Where cash-in-lieu of lands for park purposes is required, the cash-in-lieu payment shall be required by the subdivision agreement. The agreement shall provide that cash-in-lieu of lands for park purposes will be required pursuant to Section 42 of the Planning Act and that such payment shall occur upon application for Building Permit. At such time as the subdivision agreement is prepared, the



applicant may have the lots and/or blocks appraised by a qualified appraiser, wherein the value is to be determined as of the day before the day of issuance of a Building Permit. The appraisal shall define the value of each type of lot and/or block to be created based on the appraised value of the lands subject of the application as of the day before the day of issuance of a Building Permit. The Planning Services Department shall file such appraisal in the appropriate subdivision file. The agreement shall also include provision that all appraisals are valid for a period of twelve (12) months, and that after such period, the Town may, at its sole discretion, require an updated appraisal. Upon application for Building Permit, the Chief Building Official shall collect the required cash-in-lieu of payment prior to the issuance of a Building Permit. The Chief Building Official shall not issue a Building Permit until all required cash-in-lieu fees are collected.

#### 5.4. Site Plan Applications

Upon receiving an application for a Site Plan Approval, the Director of Community Planning & Development shall request the owner to provide a copy of the deed to the property where the lands have been recently purchased and the registration of the deed occurred less than twelve (12) months from the application for Site Plan Approval. In all other cases, the applicant will be advised by the Planning Services Director that an appraisal is required, wherein the value is to be determined as of the day before the day of issuance of a Building Permit. Upon receipt of the required appraisal, the Director of Community Planning & Development shall advise the Chief Building Official of the required cash-in-lieu payment and the Chief Building Official will collect the cash-in-lieu payment prior to the issuance of the Building Permit. The Chief Building Official shall not issue a Building Permit until all required cash-in-lieu fees are collected.

#### 5.5. Zoning By-law Amendment Applications and all Other Development and Redevelopment Applications

In the case of Zoning By-law Amendment applications and other development and redevelopment applications where there is not a separate planning application such as a Consent to Sever, Plan of Subdivision or Site Plan Approval application, payment of cash-in-lieu of parkland dedication shall be required prior to the issuance of a Building Permit and payments shall be required pursuant to Section 42 of the Planning Act. Upon receipt of an application for a Building Permit, the Chief Building Official shall request the Owner to provide a copy of the deed to the property where the lands have been recently purchased and the registration of the deed occurred less than twelve (12) months from the application for Building Permit. In all other cases, the applicant will be advised by the

Director of Community Planning & Development that an appraisal is required, wherein the value is to be determined as of the day before the day of issuance of a Building Permit. Upon receipt of the required appraisal, the Director of Community Planning & Development shall advise the Chief Building Official of the required cash-in-lieu payment and the Chief Building Official will collect the cash-in-lieu payment prior to the issuance of the Building Permit. The Chief Building Official shall not issue a Building Permit until all required cash-in-lieu fees are collected.

## 6. Appraisal Fees

All fees associated with all required appraisals shall be the responsibility of the applicant.

## 7. Expiry of Appraisals

All appraisals shall be valid for a period of twelve (12) months. If for any reason, the development or redevelopment does not proceed during the twelve (12) month period, an updated appraisal may be required at the sole discretion of the Director of Community Planning & Development and all policies set out herein shall apply.

## 8. Exempt Lands

Lands not considered suitable for parkland conveyance shall be determined by the Town. The Town retains the right to not accept the conveyance of any land that is considered to be unsuitable for park or public recreation purposes and without restricting the generality of the foregoing, land having any of the following features:

- i) Lands within any Environmental Protection designation and/or which have been identified as hazard lands, including associated setbacks and buffer zones;
- ii) Steep or unstable slopes, including associated setbacks and buffer zones;
- iii) Unstable soil or unconsolidated fill;
- iv) Contaminants or are suspected of being contaminated as defined by Provincial regulations;
- v) Any easement, or right-of-way that limits or restricts the Town's use of the land; and/or,
- vi) Lands that have been conveyed to the Town or other public agency for storm water management, conservation purposes, roadways, walkways/paths/trails, or any other non-parkland

purposes.

## 9. Prepayment

Prepayment of the cash-in-lieu of lands for park purposes may be made by an applicant for Building Permit prior to an appraisal being received to expedite the issuance of a Building Permit. The amount required shall be determined by the Director of Community Planning & Development and must be accompanied by a letter of understanding to pay any balance owing upon the proper appraisal being received. Any overpayment by the applicant shall be refunded forthwith by the Chief Building Official after proper appraisal and no interest shall be payable by the Town on such overpayment. Similarly, any underpayment shall become immediately due and payable upon receipt of proper appraisal and no interest shall be required.

## 10. Credit

10.1. Any previous conveyance of parkland or payment of cash-in-lieu thereof shall be credited against parkland dedication or cash-in-lieu required.

10.2. The amount of the credit will be as paid and will not be considered with interest or at current value. This section applies to any agreement or actions pursuant to Sections 41, 51 or 53 of the Planning Act, or any successor thereto and such agreements or actions remain subject to the Planning Act as was in force at that time.

10.3. The provisions of this By-law do not apply where the owner applies for a Building Permit relating to development or redevelopment for structural improvements, repairs, replacement or enlargement of buildings or structures already located on the lands if the effect of such structural improvements, repairs, replacement or enlargements do not substantially increase the size or usability of one or more buildings on the lands.

## 11. Municipal Allocation of Funds

Cash-in-lieu of lands for park purposes reserve funds are allocated by the Council according to the following priorities:

- i) Acquisition of parkland to be used for park or other recreational purposes;
- ii) Development of parkland, including grading, drainage, seeding or sodding, provision of playing fields, playground equipment, pathways and pathway lighting;

iii) Maintenance of lands, buildings or structures; and

iv) Acquisition of machinery and equipment for the maintenance of parkland.

12. Procedures for the Acquisition of Land for Park Proposes

Where the Town intends to acquire lands for park purposes (in excess of the required dedication), the Town will enter into any necessary negotiations with the property owner to establish the acquisition price. The acquisition price is subject to the approval of Council.

13. Appeal of Appraisals

13.1. If, in the opinion of the Director of Community Planning & Development, the report of the appraisal is inappropriate or incorrect, the Director may request the provision of a revised or second appraisal.

13.2. If the Owner disagrees with the position of the Director, an appeal may be lodged with Council, and Council shall determine the appropriate action. Where Council and the Owner cannot agree on the cash-in-lieu of lands for park purposes, the provisions of the Planning Act shall apply.

14. Repeal

That By-law 2682(2005), being a by-law requiring land or cash-in-lieu thereof for park purposes be and is hereby Repealed.

15. Effective Date

That this By-law shall become effective from and after the date of passing thereof.

Enacted, Signed and Sealed this  
01st Day of June, 2015.

Original By-law Signed  
Dave Augustine, Mayor

Original By-law Signed  
Nancy J Bozzato, Town Clerk