

THE CORPORATION OF THE  
TOWN OF PELHAM

BY-LAW NO. 2682 (2005)

Being a by-law requiring land or cash-in-lieu thereof for park or other public recreational purposes as a condition of consent and as a condition of development or redevelopment of land

WHEREAS subsection 42(1) of *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 of 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 subsection 42(6) of said *Planning 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 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 where more than one building permit is required for the development or redevelopment as of the day before the day the first building permit is issued.

AND WHEREAS subsection 42(7) of said *Planning Act* provides that if land has been conveyed or is required to be conveyed to a municipality for park or other public purposes or a payment of money in lieu of such conveyance has been received by the municipality or is owing to it under this section or a condition imposed under Section 51.1 or 53, no additional conveyance or payment may be required by a municipality in respect of the subsequent development unless:

1. there is a change in the proposed development or redevelopment which would increase the density of the development; or
2. land originally proposed for development or redevelopment for commercial or industrial purposes is now proposed for development or redevelopment for other purposes.


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

NOW THEREFORE, THE COUNCIL OF THE CORPORATION OF THE TOWN OF PELHAM ENACTS AS FOLLOWS:

1. Pursuant to subsection 42(1) of the *Planning Act*, R.S.O. 1990, Chapter P.13, as amended, 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 shall be conveyed to the Corporation of the Town of Pelham for park or other public recreational purposes as a condition of development or redevelopment of such land.
2. Pursuant to subsection 42(6) of the *Planning Act*, R.S.O. 1990, Chapter P.13, as amended, the Council of the Corporation of the Town of Pelham may by resolution, require the payment of money to the Town of Pelham in lieu of the conveyance required under Section 1 of this By-law and the amount of such payment shall be to the value of the land otherwise required to be conveyed to the Town and for the purpose of determining the amount of such payment, 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 where more than one building permit is required for the development or redevelopment as of the day before the day the first building permit is issued.
3. 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. The provisions of this By-law are applicable to all land under the jurisdiction of the Corporation of the Town of Pelham.

READ A FIRST, SECOND AND THIRD TIME  
AND FINALLY PASSED BY COUNCIL THIS  
20TH DAY OF JUNE, 2005 A.D.

  
MAYOR RONALD W. LEAVENS

  
CLERK CHERYL MICLETTE

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## **PURPOSE**

The purpose of this Policy is to accomplish the following objectives:

1. Ensure that lands are dedicated for park purposes as a result of the development of land in the Town; and
2. 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
3. Ensure the provision of guidelines directing Staff in carrying out the provisions of the Policy in a responsible and timely manner.

## **POLICY STATEMENT**

This Policy shall be applied in a manner consistent with the policies of the Town of Pelham Official Plan policies, the provisions of the *Planning Act*, R.S.O. 1990, c.P.13, the provisions of By-law No. (to be approved) and any other applicable legislation.

## **DEFINITIONS**

**Building Permit** shall mean 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. 2277(2001), as amended, being a by-law to implement and enforce the *Building Code Act* as amended, or any successor thereto.

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

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

**Council** shall mean 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. 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.

**Director of Planning Services** shall mean the Director of Planning Services of the Corporation of the Town of Pelham.

**Lot** shall mean 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** shall mean an application for a plan of subdivision pursuant to the provisions of Section 51 of the *Planning Act*, or any successor thereto.

**Qualified Appraiser** shall mean a member of the Appraisal Institute of Canada.

**Site Plan Application** shall mean 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** shall mean 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** shall mean 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.

### **EFFECTIVE DATE OF POLICY**

This Policy shall take effect on the 20<sup>TH</sup> day of June, 2005 (By-law No. 2682 (2005)).

### **GENERAL POLICIES**

1. 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.
2. 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%) shall be at a price negotiated with the Owner and shall be subject to the approval of Council.

3. The Town shall require cash-in-lieu of the dedication of land for park purposes where lands are not required for park purposes.
4. 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 By-law No. 2682 (2005).
5. Where reference is made in this Policy to appraisals, a letter of opinion from a qualified appraiser shall be acceptable.

### **DETAILED POLICIES**

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

#### **1. Existing Vacant Lots**

The Town will not accept the dedication of land for existing vacant lots, but will require cash-in-lieu of dedication. 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.

#### **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 Section 42 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.

### **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 Official Plan 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 Staff report to the General Committee, Planning Services Division:

*Pursuant to the provisions of the Planning Act, that the Owner convey Block \_\_\_ 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%) or five percent (5%) requirement where lands have been identified in the Official Plan for parkland acquisition. Where lands in excess of the two percent (2%) or five percent (5%) requirement, the Planning Services Department shall ensure that the following condition of draft plan approval is included in the Staff report to the General Committee, Planning Services Division:

*Pursuant to the provisions of the Planning Act, that the Owner convey Block \_\_\_ to the Town for park purposes and that the Town negotiate with the Owner the value of those lands in excess of the 5% park dedication requirements of the Planning Act.*

Where lands have not been identified for acquisition in the Official Plan, 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 Staff report to the General Committee, Planning Services Division:

*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. Site Plan Application**

With respect to applications for Site Plan Approval, 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 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 for park purposes has been paid to the Town.*

## **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 General Committee, Planning Services Division, in the Staff 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.

## **PROCESS TO DETERMINE LAND VALUES AND COLLECTION OF CASH-IN-LIEU OF LANDS FOR PARK PURPOSES**

### **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 Planning Services 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.

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.

## **2. Consent to Sever Applications**

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 Planning Services 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.

## **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 five per cent (5%) requirement, 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 five per cent (5%) 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.

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.

#### **4. Site Plan Applications**

Upon receiving an application for a Site Plan Approval, the Director of Planning Services 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 Planning Services 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. 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 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 Planning Services 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.

#### **APPRAISAL FEES**

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

#### **EXPIRY OF APPRAISALS**

All appraisals shall be valid for a period not exceeding 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 and all policies set out herein shall apply.

## **EXEMPT LANDS**

As required in the Town's Official Plan, any previous or concurrent conveyance of land to the Town or other government body for floodplain, conservation, roadway, drainage works or any other non-parkland purposes shall not be credited against the parkland dedication or cash-in-lieu thereof required.

## **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 Planning Services and/or the Chief Building Official 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.

## **CREDIT**

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

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.

The provisions of this policy 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.

## **MUNICIPAL ALLOCATION OF FUNDS**

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

- Acquisition of parkland to be used for park or other recreational purposes;
- Development of parkland, including grading, drainage, seeding or sodding, provision of playing fields, playground equipment, pathways and pathway lighting;
- Maintenance of lands, buildings or structures; and
- Acquisition of machinery and equipment for the maintenance of parkland.

## **PROCEDURES FOR THE ACQUISITION OF LAND FOR PARK PURPOSES**

Where the Town intends to acquire lands for park purposes (in excess of five per cent (5%)), 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.

### **APPEAL OF APPRAISALS**

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

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.