

**THE CORPORATION OF THE TOWN OF AMHERSTBURG
BY-LAW NO. 2023-027**

Being a By-law to require the conveyance of land for park or other recreational purposes or the payment of cash-in-lieu thereof, as a condition of the development or redevelopment of land.

WHEREAS Sections 42 and 51.1 of the *Planning Act*, as amended, provide that, as a condition of the development or redevelopment of land, the Council of a local municipality may, by by-law, or as a condition of the approval of a plan of subdivision, require that land be conveyed to the municipality for park or other public recreational purposes;

AND WHEREAS the Council of The Corporation of the Town of Amherstburg considers it desirable to enact a by-law in accordance with the provisions of the *Planning Act* for the purposes of acquiring parkland and/or cash-in-lieu of parkland for the purposes of providing enhanced parkland and/or recreational facilities for the use and enjoyment of the residents of the Town of Amherstburg;

NOW THEREFORE the Council of The Corporation of the Town of Amherstburg enacts as follows:

1.0 Definitions and Interpretations

1.1 In this By-law:

- a. "*Agricultural use*" means the cultivation of land, the production of crops and the selling of such product on the premises, and the breeding and care of livestock and the selling of such livestock or the product of such livestock raised on the premises, and without limiting the generality of the foregoing includes aviaries, apiaries, fish farming, animal husbandry, and the raising and harvesting of field, bush, or tree crops, market gardening, nurseries, greenhouses and an accessory air strip. However, "agricultural use" does not include facilities for the permanent or temporary housing of persons employed on the lot, an abattoir or any premises used for the killing of livestock or the processing of meat;
- b. "*Cash-in-Lieu*" means the payment of funds equivalent to the value of the amount of land that the Town would otherwise would have been entitled through the conveyance for park purposes as part of a development or redevelopment;
- c. "*Commercial purposes*" means the use of non-residential land, buildings or structures other than for agricultural, industrial or institutional purposes;
- d. "*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 layout out and establishment of a commercial parking lot 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;
- e. "*Industrial use*" means the use of any land, building or structure for the purpose of manufacturing, processing, assembling, making, preparing, inspecting, ornamenting, finishing, treating, altering, repairing, warehousing, storing or adapting for sale, any goods, substance, article or thing, or any part thereof, and the storage of building and construction equipment and materials, as distinguished from the buying and selling of commodities and the supplying

of personal services. Transportation terminals would also be considered as an industrial use.

- f. "*Institutional*" means any land, building or part thereof used for a non-commercial purpose by any organization, government agency or group, for charitable, education or benevolent objectives but excluding a private club, mental hospital or any place of detention or correction;
- g. "*Redevelopment*" means the removal of buildings or structures from land and the construction or erection of other buildings or structures thereupon;
- h. "*Residential use*" means the use of a building or structure or parts thereof as a dwelling;
- i. "*Town*" means The Corporation of the Town of Amherstburg.

2.0 Parkland Dedication

- 2.1 As a condition of development or redevelopment of land, the Town shall require the conveyance of land for park or other public recreational purposes as follows:
 - a. In the case of lands proposed for residential uses where land is provided by the developer, at a rate 1 hectare of parkland for every 600 net units to be developed or redeveloped;
 - b. In the case of lands proposed for commercial and industrial purposes at a rate of two percent (2%) of the gross area of the land to be developed or redeveloped;
 - c. In the case of lands proposed for institutional purposes at a rate of five percent (5%) of the gross area of the land to be developed or redeveloped.
- 2.2 The location, grades, site servicing requirements and configuration of the land required to be conveyed, shall be determined by and at the discretion of the Town. All conveyances shall be free and clear of any and all encumbrances.
- 2.3 Lands to be conveyed to the Town for park purposes shall be graded, serviced, top soiled, seeded and fenced to the specifications and satisfaction of the Town.
- 2.4 The Town will not accept as part of the parkland conveyance calculation window street view and vista corridors, walkway blocks and/or lands that are designated as environmentally sensitive.

3.0 Cash in-Lieu of Parkland Dedication

- 3.1 As an alternative to the conveyance of land, the Town may require, at its discretion, the payment of cash equivalent to the value of the lands otherwise required to be conveyed under this by-law, or a combination of land and cash.
- 3.2 In the case of lands proposed for residential uses where the cash in-lieu of parkland dedication option is used, a rate of 1 hectare of parkland for every 1000 net units to be developed or redeveloped applies.
- 3.3 The payment of the cash-in-lieu of parkland dedication is applicable under the authority of Sections 42(1) or 51(25) of the *Planning Act* as a result of development or redevelopment of property through applications received and approvals conferred by the Town for Plans of Subdivisions/ Condominiums (Section 51.1), and/or Site Plan Control (Section 41)

- 3.4 The calculation of cash will be determined, at the discretion of the Town, through the submission of a current appraisal conducted by a qualified individual.
- 3.5 In the case of industrial, institutional or commercial building expansions greater than 50% of the gross floor area of the existing building, the amount of cash in respect of the expansion shall be calculated on the amount by which the expansion exceeds 50% of the gross floor area of the existing industrial or commercial building before the expansion.
- 3.6 In the case of industrial, institutional or commercial building replacements greater than 50% of the gross floor area of the replaced building, the amount of cash in respect of the replacement shall be calculated on the amount by which the replacement exceeds 50% of the gross floor area of the replaced industrial, institutional or commercial building before the replacement.
- 3.7 For the submission of current appraisals, the determination of value shall be made in accordance with the provisions of the *Planning Act* and this By-law.
- 3.8 Funds received by the Town shall be directed to the Cash in-Lieu of Parkland Reserve Account.
- 3.9 If cash-in-lieu payments are a condition of development or redevelopment as determined by the Town, the valuation shall be determined by a qualified individual through the completion of an appraisal. The valuation of the cash-in-lieu payment shall be calculated in a manner consistent with the provision of Section 42 (6.4) of the *Planning Act*. Therefore, the value of the land shall be determined as of the day before the day the building permit issued in respect of the development or redevelopment, as of the day before the day the first permit is issued.
- 3.9 In accordance with Section 42(6) of the *Planning Act* no person shall construct a building or structure on the land proposed for development or redevelopment unless the payment has been made or arrangements for the payment that are satisfactory to the Council have been made.

4.0 Prior Conveyance and Payments

- 4.1 If land or cash has previously been provided to the Town for park or other public recreation purposes, no additional conveyance of land or the payment of cash in-lieu will be required, with the exception of the following:
- a. Where land, originally proposed or utilized for commercial, industrial or institutional development or redevelopment, is now proposed for development or redevelopment for other purposes. The amount of land and/or cash will be determined in accordance with Sections 2.0 and 3.0 of this By-law. No credit for or refunds of previously paid cash will apply; and,
 - b. Where land, originally proposed or utilized for residential development or redevelopment, is now proposed for development or redevelopment for a greater dwelling unit yield or density. The amount of land and/or cash will be determined in accordance with Sections 2.0 and 3.0 of this By-law. No credit for or refunds of previously paid cash will apply.

5.0 Exemptions

- 5.1 Notwithstanding any other provisions of this by-law to the contrary, no conveyance of land or payment of cash will be required where the development or development is for the purposes of:
- a. Additions and/or alterations to any commercial, industrial or institutional building that is equal to or less than 50% in gross floor area of the existing

building;

- b. Replacement of an existing commercial, industrial or institutional building in which the increase in gross floor areas is no greater than 50% of the replaced building;
- c. The enlargement of an existing residential dwelling unit
- d. The construction of up to two additional residential dwelling units in an existing residential dwelling unit, provided that the total gross floor area of the additional dwelling unit space or the additional dwelling units combined is not greater than the gross floor area of the existing dwelling unit;
- e. Land, buildings or structures developed or redeveloped by and used for the purposes of:
 - i) A board as defined in Subsection 1(1) of the *Education Act*;
 - ii) A college or university that is eligible to receive funding from the government of the Province of Ontario;
 - iii) A hospital as defined in Section 1 of the *Public Hospitals Act*;
 - iv) The Ontario Provincial Police or the Windsor Police Service;
 - v) The Town or any local board thereof;
 - vi) The County of Essex or any local board thereof; or,
 - vii) The Essex Region Conservation Authority.
- f. Development or redevelopment of any land for a non-residential agricultural building or structure, used for agricultural purposes;
- g. The replacement of any building or structure that is a direct result of fire or other causes beyond the control of the owner, provided that no intensification or change of use is proposed;
- h. A temporary building or structure, provided such building or structure is in existence for a period of time not longer than eight (8) months in duration;
- i. Unoccupied industrial buildings or structures having exterior walls and/or roof, up to a maximum gross floor area of 700 m².

6.0 General Provisions

- 6.1 All study, survey, appraisal and legal costs, associated with the conveyance of lands and the payment of cash, shall be at the expense of the Owner.
- 6.2 In the event that any provision, section or part of a section of this By-law is declared invalid by a court or tribunal of competent jurisdiction, it is the intention of Council that the remainder of the by-law will continue to operate in full force and effect.
- 6.3 This By-law shall come into force and effect on February 14th, 2023.

Read a first, second and third time and finally passed this 13th day of February, 2023.

MAYOR- MICHAEL PRUE

CLERK- KEVIN FOX