



BY-LAW 2013-XXX

MAY 24, 2013 DRAFT

A BY-LAW TO PROVIDE FOR THE CONVEYANCE OF LAND FOR PARK OR OTHER PUBLIC RECREATIONAL PURPOSES, OR FOR THE PAYMENT OF MONEY

WHEREAS Sections 42, 51.1 and 53 of the Planning Act, R.S.O. 1990, c.P.13, as amended, among other matters authorize Council to pass a by-law or impose a condition requiring land or cash-in-lieu of the land to be conveyed to the municipality for park or other public recreational purposes as a condition of development, redevelopment, or subdivision of land(s); and,

WHEREAS the Council of the Corporation of the City of Markham has adopted an Official Plan which contains specific policies with respect to the provision of lands for park or other public recreational purposes;

THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF MARKHAM HEREBY ENACTS AS FOLLOWS:

1.0 By-law 195-90, as amended by By-law 74-94, is hereby repealed.

2.0 Definitions

For the purposes of this By-law, the following definitions shall apply:

- 2.1 Development** means the improvement of land through the approval of a draft plan of subdivision or condominium, a zoning by-law amendment, a minor variance, site plan control or severance.
- 2.2 Floor Space Index** means the ratio of the residential *Gross Floor Area* of all buildings on a lot divided by the *gross land area* of the lot upon which the buildings are being developed.
- 2.3 Gross Floor Area** means the total area of all floors in a building, measured between the exterior faces of the exterior walls of the building at each floor level.
- 2.4 Gross Land Area** means the area of an entire *development or redevelopment* site, including the parcel of land which is to be conveyed for park purposes, but shall not include any *natural heritage feature* or *hydrologic feature* including the *vegetation protection zone* identified in the Official Plan or

Zoning By-Law in effect at the time of determination; or any *natural heritage feature* or *hydrologic feature* including the *vegetation protection zone* identified by a required Environmental Impact Study and where lands are conveyed into public ownership.

- 2.5 **Hydrologic Feature** means key hydrologic features as identified in the Oak Ridges Moraine Conservation Plan and the Greenbelt Plan, wetlands, permanent and intermittent streams, seepage areas and springs and sensitive surface water features.
- 2.6 **Natural Heritage Feature** means key natural heritage features as identified in the Oak Ridges Moraine Conservation Plan and the Greenbelt Plan, the habitat of endangered and threatened species, fish habitat, wetlands, Life Science Areas of Natural and Scientific Interest, significant valleylands, significant woodlands, significant wildlife habitat, sand barrens, savannahs and tallgrass prairies.
- 2.7 **Proponent** means an individual, an incorporated company or a group of incorporated companies that are bound together by an agreement acceptable to the City.
- 2.8 **Redevelopment** means the creation of new units, uses or lots on previously developed land, including brownfield sites.
- 2.9 **Residential Gross Floor Area** means the total area of that portion of a building that is devoted exclusively to residential use, measured between the exterior faces of the exterior walls of the building at each floor level, and excluding any surface or structured parking areas associated with such residential use.
- 2.10 **Secondary Suite** means a second residential unit in a detached house, semi-detached house or rowhouse that consists of one or more rooms designed, occupied or intended for use, including occupancy, by one or more persons as an independent and separate residence in which a facility for cooking, sleeping facilities and sanitary facilities are provided for the exclusive use of such person or persons.
- 2.11 **Valleyland** means a natural area that occurs in a valley or other landform depression that has water flowing through or standing for some period of the year.
- 2.12 **Vegetation Protection Zone** means buffers surrounding a natural heritage feature or a hydrologic feature. These areas protect the feature and its functions from the impacts of land use changes and associated activities that will occur before, during and after construction, and where possible, restore

or enhance the features and its functions.

2.13 **Wetland** means lands that are seasonally or permanently covered by shallow water or has the water table close to or at the surface. In either case the presence of abundant water has caused the formation of hydric soils and has favoured the dominance of either hydrophytic plants or water tolerant plants. The four major types of *wetlands* are swamps, marshes, bogs and fens. Periodically soaked or wet lands being used for agricultural purposes, which no longer exhibit wetland characteristics, are not considered to be wetlands for the purposes of this definition.

2.14 **Woodland** means an area of land at least 0.2 hectare in area and includes locally significant *woodlands* with at least:

- (a) 1000 *trees* of any size, per hectare;
- (b) 750 *trees* measuring over 5 centimetres diameter at breast height, per hectare;
- (c) 500 *trees* measuring over 12 centimetres diameter at breast height, per hectare; or,
- (d) 250 *trees* measuring over 20 centimetres diameter at breast height, per hectare,

but does not include a cultivated fruit or nut orchard, a plantation established and used for the purpose of producing Christmas trees or nursery stock. For the purposes of defining a *woodland*, treed areas separated by more than 20 metres will be considered a separate *woodland*. When determining a *woodland*, continuous agricultural hedgerows and *woodland* fingers or narrow *woodland* patches will be considered part of the *woodland* if they have a minimum average width of at least 40 metres and narrower sections have a length to width ration of 3 to 1 or less. Undeveloped clearings with *woodland* patches are generally included within a *woodland* if the total area of each clearing is no greater than 0.2 hectares. In areas covered by Provincial Plan policies, *woodland* includes treed areas as further described by the Ministry of Natural Resources. For the purposes of determining densities for *woodlands* outside of the Provincial Plan areas, the following species are excluded: staghorn sumac, European buckthorn, common lilac.

3.0 Parkland Acquisition

3.1 As a condition of *development* or *redevelopment*, it is required that land be conveyed to the City for parks purposes in an amount not exceeding:

- a) for lands proposed for industrial or commercial purposes, 2 percent of the *gross land area*; and,

- b) for all other land uses, except for residential purposes, 5 per cent of the *gross land area*; and,
- c) for lands proposed for residential purposes,
 - i) where the residential development is comprised of detached and semi-detached dwelling units, 1 hectare per 300 dwelling units, provided that in no case shall the conveyance be less than 5 percent of the *gross land area*;
 - ii) where the residential development is comprised of townhouse, stacked townhouse, or small multiplex buildings containing 3 to 6 dwelling units, 1 hectare per 300 dwelling units OR 1.2 hectares per 1000 persons, whichever is the lesser, provided that in no case shall the conveyance be less than 5 per cent of the *gross land area*;
 - iii) where the residential development is comprised of apartment dwelling units, 1.2 hectares per 1000 persons, subject to any dedication reductions permitted by Section 4.0 of this By-law; provided that in no case shall the conveyance be less than 5 per cent of the *gross land area*.

3.2 For lands that include a mixture of land uses, conveyance requirements are the sum of the parkland conveyances for each individual use as determined in Section 3.1. For uses described in Section 3.1 a) and 3.1 b), the land area for the purposes of calculating the amount of required parkland conveyance shall be determined by the sum of:

- i) the *Gross Floor Area* of the ground floor exclusively devoted to such use; and,
- ii) any surface parking area exclusively devoted to such use.

3.3 Where the conveyance of land to the City involves a relationship amongst residential built form, density, and the population generated by the development, the parkland dedication calculation shall be based on the persons-per-unit figures for each housing form, as described in the 2009 Markham Development Charges Background Study by Hemson Consulting Ltd., or the most recent Markham Development Charges Background Study which includes persons-per-unit figures for each housing form.

- 3.4 Land conveyed to the City under this section shall be used for park purposes, but may be sold at any time, subject to the policies of the Official Plan and this By-law.

4.0 Additional Reductions/Exemptions to the Parkland Conveyance Requirements

- 4.1 Notwithstanding Section 3.0 of this By-law, where lands proposed for *development or redevelopment* consist of apartment dwelling units located within a building containing more than 6 dwelling units, and located within identified “Centres and Corridors” as shown on Map 2 to the Markham Official Plan:

- a) The conveyance required shall be 1.2 ha/1000 people, for that component of a residential development having a *Floor Space Index* of less than 3.0;
- b) The conveyance required shall be 0.84 ha/1000 people, for that component of a residential development having a *Floor Space Index* of between 3.0 and 6.0;
- c) The conveyance required shall be 0.42 ha/1000 people, for that component of a residential development having a *Floor Space Index* greater than 6.0.

The above rates shall be applied and calculated on a cumulative basis. To qualify for the reduced rate, the *development or redevelopment* shall be consistent with any applicable built form, height and massing guidelines and in conformity with policies of the Official Plan and any applicable Secondary Plan, all to the satisfaction of the City.

- 4.2 The City may consider a reduction to, or exemption from, conveyance for park purposes where a *development or redevelopment*:

- a) is a public use;
- b) includes affordable housing in accordance with the definition of affordable housing in the Provincial Policy Statement;
- c) is a nursing home as defined by the Long-Term Care Act, 2007;
- d) is being undertaken by a not-for-profit organization; or,
- e) is within a Heritage Conservation District or a Heritage Conservation District Study Area, and the development is in substantial conformity

with the policies and guidelines of the heritage conservation district plan, the Markham Official Plan and any applicable Secondary Plan.

4.3 Any conveyance reduction or exemption under Section 4.2 **above** shall be established by the City on a case-by-case basis, subject to an assessment of the following:

- a) the scale of the proposed *development* or *redevelopment*;
- b) the proposal's anticipated impact on the use and supply of public parkland in the adjacent community;
- c) the proposal's contribution to the achievement of the City's relevant planning objectives and design policies as expressed in the Official Plan.

4.4 No conveyance for park purposes is required for the following:

- a) the enlargement or alteration of an existing residential building provided that the building continues to conform to the Zoning By-law and the enlargement or alteration does not increase the number of dwelling units that lawfully existed prior to such enlargement or renovation; and,
- b) notwithstanding 4.4 a) above, no conveyance for park purposes is required for the creation of a *Secondary Suite*.

5.0 Credits and New Requirements for Parkland Conveyance

5.1 If land has been conveyed, or is required to be conveyed to the City for park purposes, or if a payment of cash-in-lieu of such conveyance has been received by the City or is owing to it under this By-law or as a condition imposed under Sections 42, 51.1 or 53 of the Planning Act, R.S.O. 1990, c.P.13, as amended, no additional conveyance or payment in respect of the land subject to the earlier conveyance or payment is required in respect of subsequent *development* or *redevelopment*, unless:

- a) there is a change in the proposed *development* or *redevelopment* which would increase the residential population; or,
- b) land originally proposed for *development* or *redevelopment* for commercial or industrial purposes is now proposed for *development* or *redevelopment* for other purposes;

whereupon the *development* or *redevelopment* shall be subject to a recalculation of parkland conveyance, in accordance with the Planning Act,

the policies of the Official Plan and this By-law.

- 5.2 Where an application for *development* or *redevelopment* indicates a reduced level of residential population than is existing, or approved but not yet built, the parkland conveyance shall be reassessed by the City. Any surplus parkland conveyance or cash-in-lieu payment made thereof to the City, may be applied as a credit to future *development* or *redevelopment* by the same *proponent*.
- 5.3 Subject to the approval of the City, in any instance where land in excess of the amount of land required for dedication has been conveyed to the City for park purposes in association with *development* or *redevelopment*, the excess may be applied as a credit to future *development* or *redevelopment* by the same *proponent*.

6.0 Cash-in-lieu of Conveyance for Park Purposes

- 6.1 It is the objective of the City to obtain the maximum amount of parkland permissible by the policies of the Official Plan and this By-law. The City, at its discretion, may accept the payment of cash-in-lieu of parkland, or a combination of land and cash-in-lieu, up to the value of the land otherwise required to be conveyed.
- 6.2 The City shall accept cash-in-lieu of conveyance only under the following circumstances:
- a) where no opportunity exists to provide suitable parkland on the proposed development site;
 - b) where the required land conveyance fails to provide an area of appropriate size, configuration or location for development of a public park;
 - c) where the required land conveyance would render the remainder of the development site unusable or impractical for development; or,
 - d) where existing public park facilities in the vicinity of the site area are adequate to serve the projected population.
- 6.3 All money received by the City through payments of cash-in-lieu of park conveyance, and all money received on the sale of public parkland less eligible expenses, shall be paid into a Parkland Acquisition Account and spent only for the acquisition of land to be used for public park purposes.

- 6.4 The money in the Parkland Acquisition Account may be invested in securities in which the municipality is permitted to invest under the Municipal Act, 2001, and the earnings derived from the investment of the money shall be paid into the Parkland Acquisition Account. The auditor in the auditor's annual report shall report on the activities and status of the Parkland Acquisition Account.
- 6.5 The City shall establish, in the case of *development* or *redevelopment*, the value of any required cash-in-lieu of parkland as of the day before the day the building permit is issued in respect of the development or, if more than one building permit is required for the development, as of the day before the day the first permit is issued. In the case of land division through either plan of subdivision or consent, such valuation shall be on the day prior to draft plan approval or the granting of a provisional consent, as the case may be.
- 6.6 Where a Draft Plan of Subdivision includes a mixture of uses and/or a mixture of housing types, the City shall further subdivide the Draft Plan of Subdivision as follows:
- a) for all uses within the Draft Plan of Subdivision that require Site Plan Approval, the land value for any required payment for park purposes conveyance shall be established as of the day before the day the building permit is issued; and,
 - b) for all other uses within the Draft Plan of Subdivision where Site Plan Approval is not required, the land value for any required payment for park purposes conveyance shall be established as of the day before the day of the approval of the Draft Plan of Subdivision, less those lands identified in a) above.
- 6.7 Where cash-in-lieu of a conveyance for park purposes is required, the value of the land shall be determined by a market appraisal, carried out by an independent, accredited appraiser retained by the City, at the cost of the applicant. Where there is a dispute over land value, the City may require a peer review by another independent, accredited appraiser at the applicant's expense. The City shall establish the Terms of Reference for each appraisal.
- 6.8 Notwithstanding Section 6.7 above, the City may utilize other valuation approaches, including, but not limited to:
- a) a recent record of land sale not more than 1 year old; or
 - b) a per hectare land value established by the City on an annual basis; or
 - c) where appropriate in the opinion of the Manager of Real Property, an in-

house valuation of the market value of the land prepared by the Manager of Real Property.

7.0 Land Acceptable/Not Acceptable for Parkland Conveyance

7.1 The acceptance of lands to be conveyed for park purposes shall be at the discretion of the Commissioner of Development Services, or his or her successor or delegate and subject to a Phase 1 Environmental Site Assessment, or if necessary at the sole discretion of the Commissioner of Development Services or his or her successor or delegate, a Phase II Environmental Site Assessment or Record of Site Condition.

7.2 Lands considered suitable for conveyance for parks purposes shall specifically **not** include the following:

- a) Any *natural heritage feature* or *hydrologic feature* including the *vegetation protection zone* identified in the Official Plan or Zoning By-law in effect at the time of determination; or
- b) Any *natural heritage feature* or *hydrologic feature* including the *vegetation protection zone* identified by a required Environmental Impact Study and where lands are conveyed into public ownership.
- c) utility rights-of-way;
- d) any lands encumbered by easements or right-of-use agreements that restrict, in any way, the City's use of the land for public park or other recreational purposes, other than those to which the City is a Party;
- e) land areas required only to provide connecting pedestrian and bicycle routes;
- f) any other lands deemed by the City as unsuitable for park purposes conveyance, due to size, road frontage, topography, contamination status or location.

7.3 *Natural heritage features* including *woodlands*, *wetlands*, and *valleylands*, such as ponds, rivers and creeks and associated *vegetation protection zones*, may be incorporated into lands conveyed to the municipality, and retained in their natural state, recognizing that such features are an asset to the community. These lands shall not be acceptable as part of the parkland conveyance requirement.

7.4 Land for park purposes may be designed to include stormwater detention features. In instances where, in the opinion of the City, the stormwater

detention facility precludes in whole or in part the use of that portion of the area for typical park purposes, then such stormwater detention areas shall not be accepted as part of the conveyance requirement.

- 7.5 The City may accept the conveyance of lands that are not contiguous to the site that is subject to *development* or *redevelopment*, provided that the value of the land to be provided off-site is approximately equal to the value of the lands from the subject *development* or *redevelopment* site intended for park purposes. The City may also accept a combination of off-site land, on-site land and/or cash-in-lieu of the conveyance of land.

7.6 Nothing in this By-law shall limit the City's ability to enter into area specific parkland dedication, delivery and funding arrangements with *proponents*.

7.7 Nothing in the By-law shall be interpreted so as to frustrate, invalidate or supersede existing agreements that have been previously executed between *proponents* and the City of Markham with respect to area specific parkland dedication, delivery and funding arrangements, provided that the proposed development proceeds in the manner set out under such agreements.

8.0 Administration

- 8.1 This By-law shall be administered by the Director of Planning and Urban Design.

- 8.2 Where a conveyance or cash-in-lieu of conveyance for park purposes under this By-law is required, the City shall not issue a Building Permit, and no person shall construct a building on the land proposed for *development* or *redevelopment* unless arrangements for the conveyance of the land and/or payment of the cash-in-lieu of land have been made that are satisfactory to the City.

- 8.3 In the event of a qualifying/eligible dispute between the City and an owner of land on the determined amount of land and/or the value of land, either party may apply to the Ontario Municipal Board to have the value determined and the Board shall make a final determination of the matter, in accordance with the Planning Act.

- 8.4 Any legal or administrative costs associated with the conveyance of land shall be the responsibility of the transferor.

- 8.5 The park purposes conveyance policies of this By-law shall be reviewed by the City from time to time, in conjunction with the City's Official Plan review, to ensure its ongoing validity relative to the City's evolving development context.

8.6 Nothing in this By-law is intended to limit the rights afforded under the Planning Act, R.S.O. 1990, c.P.13, as amended.

READ A FIRST, SECOND AND THIRD TIME AND PASSED THIS ____ DAY OF _____,
2013

KIMBERLEY KITTERINGHAM,
TOWN CLERK

FRANK SCARPITTI,
MAYOR

DRAFT



EXPLANATORY NOTE

BY-LAW 2013-_____

A BY-LAW TO PROVIDE FOR THE CONVEYANCE OF LAND FOR PARK OR OTHER PUBLIC RECREATIONAL PURPOSES, OR FOR THE PAYMENT OF MONEY

Corporation of the City of Markham

All lands within the Corporation Limits of the City of Markham

Lands Affected

The proposed by-law applies to all lands within the corporation limits of the City of Markham.

Existing By-law

The dedication of land or cash-in-lieu of land to the City of Markham for park purposes is governed by By-law 195-90, as amended by By-law 74-94. By-law 195-90, as amended by By-law 74-94, is proposed to be repealed in its entirety and replaced by this By-law.

Purpose and Effect

The purpose of this By-law is to provide for regulations governing the dedication of land or cash-in-lieu of land for parks purposes to the City of Markham, through the development or redevelopment of land.

The effect of this By-law is that lands proposed for development or redevelopment in the City of Markham shall provide for a dedication of land or cash-in-lieu of land for parks purposes, in accordance with this By-law.