



**As amended by By-laws 23-2015, 111-2018  
By-law 91-2007  
of The Corporation of the City of Oshawa**

being a by-law to require the conveyance of land for park or other public recreational purposes as a condition of development or redevelopment and to repeal By-law 77-92, as amended.

WHEREAS Section 42 of the Planning Act, as amended, provides that, as a condition of the development or redevelopment of land, the council of a local municipality may, by by-law, require that land in an amount not exceeding, in the case of land proposed for development or redevelopment for commercial or industrial purposes, 2 per cent and in all other cases 5 per cent, be conveyed to the municipality for park or other public recreational purposes;

AND WHEREAS Section 51.1 of the Planning Act, as amended, provides that the approval authority may impose, as a condition of the approval of a plan of subdivision, that land be conveyed to the municipality or other requirements for park or other public recreational purposes, such land not to exceed, in the case of a subdivision proposed for commercial or industrial purposes, 2 per cent, and in all other cases 5 per cent;

AND WHEREAS the Regional Municipality of Durham has, by By-law 56-2000, delegated the authority to approve applications for plans of subdivision and condominium descriptions submitted on or after March 28, 1995 to Oshawa City Council, effective November 1, 2000;

AND WHEREAS the Planning Act provides that a local municipality may require the payment of money to the value of the land otherwise required to be conveyed;

AND WHEREAS in the case of land proposed for development or redevelopment or a subdivision proposed for residential purposes a municipality or approval authority may require that such land be conveyed at the rate of up to one hectare for each 300 dwelling units, or alternatively the municipality or approval authority may require a cash payment in lieu of parkland dedication calculated at a rate of one hectare for each 500 dwelling units, provided that the municipality or approval authority has an official plan in effect in the local municipality that has specific policies dealing with the provision of lands for park or other public recreational purposes and the use of this alternative requirement;

AND WHEREAS on February 5, 1992, the Minister of Municipal Affairs and Housing approved an amendment to the Oshawa Official Plan enabling the Council of the Corporation of the City of Oshawa to require the conveyance of land at the rate of up to one hectare for each 300 dwelling units proposed for development or redevelopment, as an alternative to the conveyance of land not exceeding five percent of the land proposed for residential development or redevelopment;

AND WHEREAS Section 23.1 of the Municipal Act allows a municipality to delegate its powers and duties to a person or body subject to certain restrictions set out in the Municipal Act;

NOW, THEREFORE, BE IT ENACTED AND IT IS HEREBY ENACTED as a by-law of The Corporation of the City of Oshawa by the Council thereof as follows:

### **Definitions**

1. For the purpose of interpretation of this by-law, the following definitions shall apply:
  - (a) "Accessory" in reference to the use of a building or structure, means that the building or structure is naturally and normally incidental to or subordinate in purpose or both, and exclusively devoted to a principal use, building or structure.
  - (b) "Agricultural", in reference to use, means land, buildings or structures used, designed or intended to be used solely for an "agricultural operation" as that term is defined in section 1 of the Farming and Food Production Protection Act, 1998, S. O. 1998, c. 1.

- (c) “Board of Education” has the same meaning as the term “board”, defined in the Education Act.
- (d) “Building permit” means a permit issued by the City’s Chief Building Official for the construction of a structure occupying an area greater than ten (10) square metres consisting of a roof supported by walls or columns.
- (e) “City” means the Corporation of the City of Oshawa.
- (f) “Commercial”, in reference to use, means land, buildings or structures of any kind whatsoever used, designed or intended to be used for a Non-Residential use other than an Agricultural use, an Industrial use, or an Institutional use.
- (g) “Development” means the construction, erection or placing of one (1) 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 usability of the building or structure.
- (h) “Dwelling Unit” means a room or series of rooms containing toilet and culinary facilities designed for Residential use as a single housekeeping unit.
- (i) “Gross Floor Area” means the total floor area of all floors, whether above or below grade, measured between the outside of exterior walls, or between the outside of exterior walls and the centre line of Party Walls and, without limitation, includes
- (i) cellars
  - (ii) basements
  - (iii) corridors
  - (iv) lobbies
  - (v) half-stories
  - (vi) mezzanines and
  - (vii) areas occupied by interior walls or partitions
- but does not include
- (i) elevator shafts
  - (ii) stairwells
  - (iii) roof areas
  - (iv) crawl spaces
  - (v) indoor refuse storage or collection areas
  - (vi) mechanical or electrical rooms or
  - (vii) areas used for parking or loading, whether in the main building or an Accessory building.
- (j) “Hospital” has the same meaning as the term, “hospital”, defined in section 1 of the Public Hospitals Act, R.S.O. 1990, c. P.40.
- (k) “Industrial”, in reference to use, means land, buildings, or structures of any kind whatsoever or any portion thereof, used, designed or intended to be used for or in connection with,
- (i) manufacturing, producing, processing, storing or distributing something,
  - (ii) research or development in connection with manufacturing, producing or processing something,
  - (iii) retail sales by a manufacturer, producer or processor of something they manufactured, produced or processed, if the retail sales are at the site where the manufacturing, production or processing takes place,
  - (iv) office or administration purposes, if they are,
    - carried out with respect to manufacturing, processing, storage or distributing of something, and
    - in or attached to the building or structure used for that manufacturing, producing, processing, storage or distribution.
- (l) “Institutional”, in reference to use, means land buildings or structures, used or designed for use by an organized body, society, health care organizer or

religious group and shall include without limiting the generality of the foregoing, a Non-profit Institution and a Nursing Home.

- (m) "Local Board" has the same meaning as the term, "local board" defined in Development Charges Act, 1997, S.O. 1997, c. 27.
- (n) "Non-profit Institution" means:
  - (i) a "registered charity" as defined in subsection 248(1) of the Income Tax Act, R.S.C. 1985, c. 1 (5<sup>th</sup> Supp.), as amended,
  - (ii) a corporation that is a non-profit organization for the purposes of paragraph 57 (1) (b) of the Corporations Tax Act, R.S.O., c. R.23;
  - (iii) a "religious organization" as defined in subsection 1(1) of the Religious Organizations' Lands Act, R.S.O. 1990, c. R.23.
- (o) Intentionally deleted (23-20154)
- (p) "Non-residential", in reference to use, means land, buildings or structures of any kind whatsoever used, designed or intended to be used for other than a Residential use.
- (q) "Nursing Home" has the same meaning as the term, "nursing home", defined in subsection 1 (1) of the Nursing Homes Act, R.S.O. 1990, c. N.7.
- (r) "Official Plan" means the Oshawa Official Plan as approved by the Minister of Municipal Affairs and as amended.
- (s) "Park Purposes" means the use of land for a public park or other public recreational purpose.
- (t) "Party Wall" means a wall jointly owned and used by two parties under an easement agreement or by right in law and erected at or upon a line separating two parcels of land each of which may be lawfully transferred or conveyed in accordance with the provisions of the Planning Act.
- (u) "Redevelopment" means the removal of one (1) or more buildings or structures from land and the development of the land or the development of land by the alteration of an existing building or structure on the land.
- (v) "Residential" in reference to use, means land, buildings or structures of any kind whatsoever or any portion thereof, used, designed or intended to be used for one or more individuals as living accommodations or combined live/work accommodations.
- (w) "Temporary" in reference to use, means 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.

### **Geographic Applicability**

- 2. This by-law applies to all land within the City of Oshawa boundaries.

### **Conveyance of Land Required: Amount**

- 3. As a condition of development or redevelopment of land, City Council requires that land be conveyed to the City for Park Purposes as follows:
  - (a) In the case of land proposed for commercial and industrial purposes, two percent (2%) of the land to be developed or redeveloped.
  - (b) In the case of land proposed for other than commercial and industrial purposes, five percent (5%) of the land to be developed or redeveloped.
  - (c) Where the development or redevelopment is proposed for mixed use purposes as described in both subparagraph 3(a) and (b), the amount of land to be conveyed shall be land having a value calculated in accordance with the following formula:

$$\text{Value of land to be conveyed} = (.02 \times A \times (B/D)) + (.05 \times A \times (C/D))$$

Where:

- A = the appraised value of the land
  - B = the area in square metres of the portion of the parcel of land used for commercial or industrial purposes
  - C = the area in square metres of the portion of the parcel of land used for a use other than commercial or industrial purposes
  - D = the area in square metres of the parcel of land
- (d) The location and the configuration of land required to be conveyed shall be at the discretion of Council, and shall be dependent upon the intended function, size, location and physical features of the land. In addition, land for Park Purposes shall be conveyed to the City in a satisfactory condition bearing the full depth of its original topsoil, being free of construction debris, unconsolidated fill or other refuse, and being fenced to the satisfaction of the City. Where it has been determined by the City that lands to be conveyed to the City for Park Purposes 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.
  - (e) Any conveyance shall be free of all encumbrances except those Council may accept by resolution.
  - (f) Any conveyance of land shown as Hazard Lands and/or Environmentally Sensitive Area in the Oshawa Official Plan or any Secondary Plan adopted under the Official Plan of the former Oshawa Planning Area and the Official Plan for the former East Whitby Planning Area, shall not be considered a conveyance of land for Park Purposes pursuant to the requirements set forth in paragraph 3 of this by-law.

#### **Cash-in-Lieu Instead of Land**

- 4. Notwithstanding paragraph 3, where the conveyance of land is not required, or the land is not considered appropriate by the City for Park Purposes, cash-in-lieu of a conveyance of land shall be accepted equal to the value of the land otherwise required to be conveyed under this by-law, in accordance with the procedures established and revised from time to time by the City.

#### **Conveyance of and/or Cash-in-Lieu for Land**

- 5. City Council may require cash-in-lieu of the conveyance of land, or a combination of the conveyance of land and cash-in-lieu, under the following circumstances:
  - (a) where the use of the alternative requirement for land to be conveyed would result in the conveyance of more than ten percent of the total land area of a site proposed for Development, or would render the remainder of the site unfit for development; and/or
  - (b) where the required land conveyance would not provide a land area of suitable size, shape or location to achieve the City's objectives for the development of land for Park Purposes according to the relevant policies of the Oshawa Official Plan.
- 6. In determining the area of land for purposes of calculating the required conveyance of land or cash-in-lieu thereof for Park Purposes, pursuant to the redevelopment, expansion, extension or alterations of existing uses other than an Industrial use, the required conveyance of land or cash-in-lieu thereof shall be determined by calculating the equivalent land area necessary for the redevelopment, expansion, extension or alteration to meet the requirements of the zoning by-law if the area of redevelopment, expansion, extension or alteration were the subject of a consent to sever application.
- 7. In determining the area of land for purposes of calculating the required conveyance of land or cash-in-lieu thereof for Park Purposes, pursuant to the redevelopment,

expansion, extension or alteration of an existing industrial use the required conveyance of land or cash-in-lieu thereof shall be determined by calculating the equivalent land area necessary only for that portion of the redevelopment, expansion, extension or alteration that exceeds 50% of the Gross Floor Area of the existing industrial building before the redevelopment, expansion, extension or alteration to meet the requirements of the zoning by-law if the area that exceeds 50% of the Gross Floor Area of the existing industrial building were the subject of a consent to sever application.

### **Appraisals of Land Value**

8. In determining the area of land for purposes of calculating the required conveyance of land or cash-in-lieu thereof for Park Purposes, gross land area shall be used, with the exception of those lands to be excluded from the calculation of the five percent conveyance as per paragraph 11 of this by-law.
9. In determining the amount of cash to be conveyed to the City in lieu of the conveyance of land that would otherwise be required pursuant to Paragraph 3 above, the value of the lands to be conveyed shall be estimated as:
  - (a) the value of the land the day before the building permit is issued in respect of the development or redevelopment or, if more than one building permit is required for the development or redevelopment, as of the day before the day the first permit is issued; or,
  - (b) the value of the land as of the day before the day of approval of the draft plan of subdivision.

### **Alternate Rate**

10. Notwithstanding paragraph 3, in the case of development or redevelopment of land for residential purposes, City Council may require the conveyance of land to the City for Park Purposes at a rate of one hectare for each 300 dwelling units proposed.
- 10.1 Notwithstanding paragraph 3 and paragraph 10, in the case of development or redevelopment of land for residential purposes, City Council may require cash-in-lieu of the conveyance of land for Park Purposes at a rate of one hectare for each 500 dwelling units proposed.
- 10.2 In the case of mixed commercial and residential development proposals subject to any of the rates in paragraphs 10 or 10.1, the rates shall be applied only to the residential component.
11. The rates specified in paragraph 10 and 10.1 may be applied to blocks within plans of subdivision in which these rates would yield a conveyance greater than five percent, provided such blocks are excluded from the calculation of the conveyance of land to be required in accordance with subparagraphs 3(a) and 3(b) of this by-law.

### **Compliance Required Prior to Issuance of Building Permit**

12. Any conveyance or payment required to be made under this by-law shall be made prior to the issuance of a building permit for the development or redevelopment concerned.

### **Certain Types of Development Exempt**

13. Notwithstanding any other provision of this by-law to the contrary, this by-law does not apply to:
  - (a) development which does not result in an increase in the number of residential dwelling units erected on the land beyond the number of such unit(s) lawfully in existence prior to such Development, for which units a conveyance of land or cash-in-lieu of land was made under the Planning Act or its predecessors;
  - (b) the enlargement of an existing dwelling unit;
  - (c) the creation or enlargement of an accessory building for a lawful residential use;

- (d) the creation of one or two additional dwelling units within an existing single detached dwelling unit;
- (e) the creation of one additional dwelling unit in any other existing Residential building where the total gross floor of the additional dwelling unit is equal to or less than the gross floor area of the smallest dwelling unit contained within the residential building;
- (f) development on lands designated under federal law as land reserved for the exclusive use of native people;
- (g) development by, on behalf of, or on lands owned by and used for the purposes of a municipality, a Local Board or a Board of Education;
- (h) development on lands wholly within that part of Oshawa known as the Central Business District Renaissance Community Improvement Area and as depicted in Schedule "A" to this By-law;
- (i) a new Industrial building comprising a Gross Floor Area not exceeding 5,000 square feet;
- (j) Intentionally deleted (23-2015);
- (k) Intentionally deleted (23-2015);
- (l) the enlargement of an existing industrial building or structure if the Gross Floor Area is enlarged by 50% or less;
- (m) that part of lands outside of a registered plan of subdivision used solely for the purposes of:
  - (i) a Non-profit Institution;
  - (ii) a Hospital;
  - (iii) Intentionally deleted (23-2015) or
  - (iv) a Nursing Home;
- (n) a temporary building or structure; or
- (o) an agricultural building or structure.

#### **Credits for Demolitions and Conversions and Previous Conveyances**

14. Notwithstanding any other provision of this By-law, where a Development involves the demolition of buildings or structures pursuant to a demolition permit issued pursuant to the Building Code Act within the one hundred and twenty month period preceding the issuance of a building permit pursuant to the Building Code Act respecting the development, or the conversion of a building or structure from one principal use to another principal use on the same land, the required conveyance of land or cash-in-lieu thereof with respect to such Development shall be reduced by the following amounts:
  - (a) in the case of a Residential building or structure, or the Residential uses in a mixed use building or structure, an amount calculated by multiplying the applicable per unit charge as established by Council by the number representing the type of unit that has been or will be demolished or converted to another principal use;
  - (b) in the case of a Non-Residential building or structure, or the Non-Residential uses in a mixed use building or structure, an amount calculated by determining the equivalent land area necessary for the building or structure that has been or will be demolished or converted to another principal use to meet the requirements of the zoning by-law if the area of redevelopment, expansion, extension or alteration were the subject of a consent to sever application that has been or will be demolished or converted to another principal use.
15. Notwithstanding any other provision of this By-law, if land has been conveyed or required to be conveyed or cash-in-lieu paid or required to be paid, an additional conveyance of land or another cash-in-lieu payment may be required where there is a

change in the proposed development or redevelopment which would increase the density of development or where land originally proposed for development or redevelopment for commercial or industrial purposes is now proposed for development or redevelopment for other purposes. In such cases, the amount of land to be conveyed of the amount of cash-in-lieu to be paid shall be calculated in accordance with the following formulas:

For residential redevelopments:

$$\text{Value of land to be conveyed} = A - (B \times .05) = C$$

Where:

- A = the value of the previous conveyance
- B = the value of the land
- C = the balance owing (if negative. If the product is positive, there is no balance owing)

For non-residential redevelopments:

$$\text{Value of land to be conveyed} = A - (B \times .02) = C$$

Where:

- A = the value of the previous conveyance
- B = the value of the land
- C = the balance owing (if negative. If the product is positive, there is no balance owing)

16. Notwithstanding any other provision of this By-law, the credits for demolitions and conversions under Paragraphs 14 and 15 shall not exceed, in total, the amount of the required conveyance of land or cash-in-lieu thereof.

**Delegation of Authority for Cash-in-Lieu Instead of Land**

17. The ability of City Council under this by-law to require, accept or refund cash-in-lieu of a conveyance of land is hereby delegated to the Commissioner of Development Services or his or her delegate.

**Schedule "A"**

18. Schedule "A" attached hereto shall form part of this By-law.

**Date By-law Comes into Force and Effect**

19. This by-law shall come into force and effect on July 17, 2007.

**Repeal of By-law Number 77-92**

20. By-law Number 77-92, as amended, is hereby repealed.

By-law approved this sixteenth day of July, 2007.

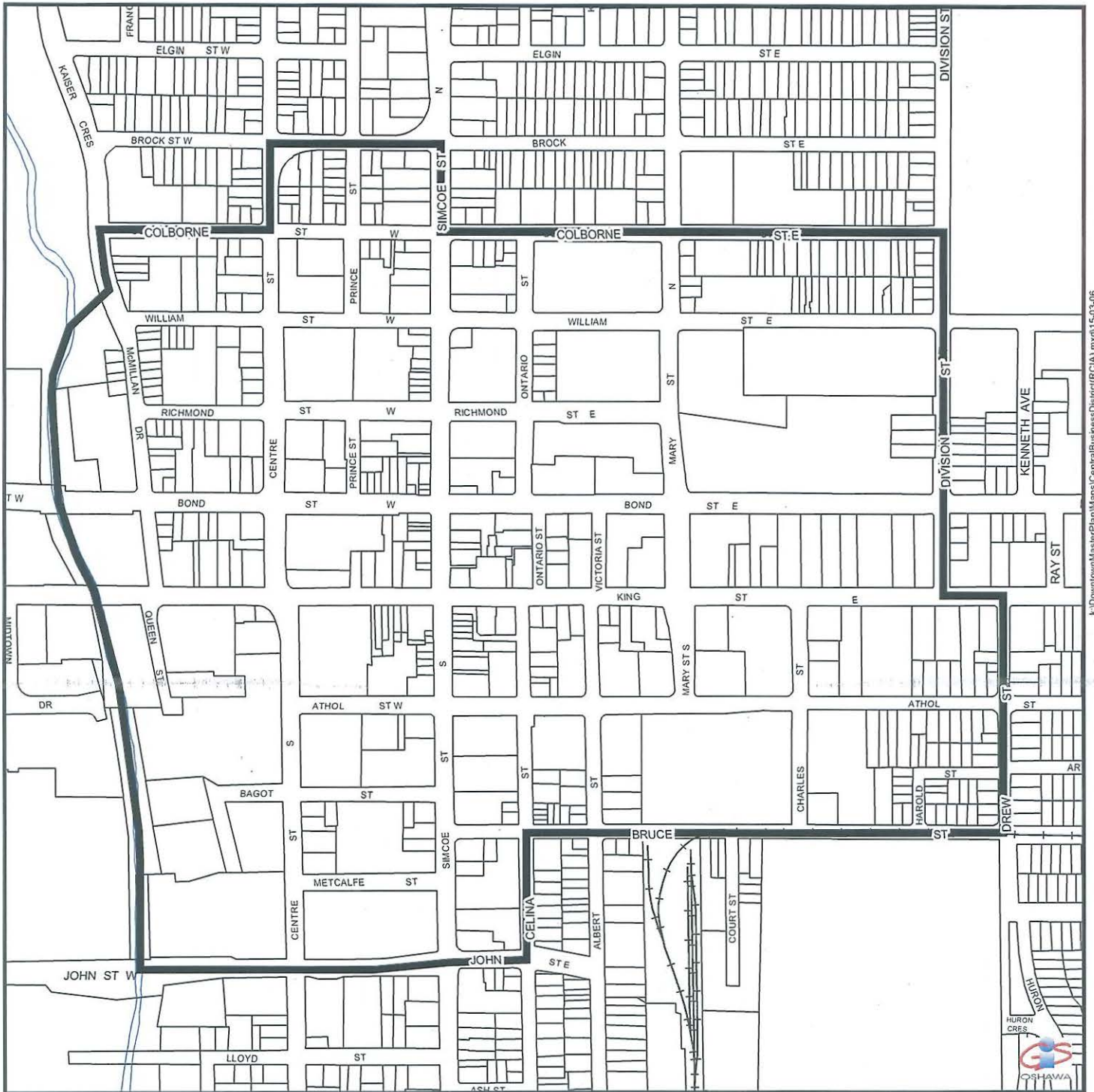
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Mayor

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City Clerk





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Schedule 'A' to By-Law 91-2007  
the Corporation of the City of Oshawa

 Central Business District Renaissance  
Community Improvement Area

