

The Corporation of the City of Kenora

By-Law Number 189 - 2010

A By-Law to Designate the Whole of the City of Kenora as a Site Plan Control Area, Pursuant to Section 41 of the Planning Act, R.S.O. 2001, Chapter P-13, As Amended and to Adopt Certain Procedures for the Processing of Site Plan Control Applications and to Exempt Certain Classes of Development from Approval of Plans and Drawings and to Repeal By-Law Number 63-2010

Whereas Subsection 41(12) of The Planning Act, R.S.O., 2001, c.P.13 provides that a Council of a local municipality may, where in an official plan an area is shown or described as a proposed site plan control area, designate the whole or any part of such area as a site plan control area; and

Whereas the Official Plan for the City of Kenora describes the whole of the City of Kenora as an area subject to Site Plan Control.

Now Therefore Be It Resolved That:- the Council of the Corporation of the City of Kenora enacts as follows:

All lands within the limits of the City of Kenora effective July 14, 2005 are subject to the provisions of this By-law, and of S.41(4) of the Planning Act, R.S.O. 2001 c.P-13.

2. GENERAL PROVISIONS

Subject to Section 3 (a), Exemptions, the following residential, commercial, industrial and institutional developments shall be subject to Site Plan Control:

- (1) New non-residential developments or additions to existing non-residential developments.
- (2) Any residential development containing four (4) or more dwelling units.
- (3) The development, redevelopment, alteration or expansion of any above ground broadcasting and communications buildings or structures.
- (4) The development, redevelopment, alteration or expansion to any above ground utilities infrastructure, including wind or water turbines.
- (5) Commercial Parking Lots and Commercial Parking Structures as defined in Section 14 of this By-law.
- (6) Day Care Centre: Any facility which is constructed or converted for use as a Day Care Centre as defined in Section 14 of this By-law, unless included as part of a previously approved commercial development.
- (7) Any patio accessory to a commercial use and located outdoors on private property; this does not apply to industrial or institutional uses.
- (8) Environmental Areas: Any development on or adjacent to lands designated environmental protection area, environmental resource area, environmental wetland area, area of natural or scientific interest or similar designation in an Official Plan, including Black Sturgeon Lake, or identified through reports required as a component of an application for development, made under the *Planning Act*. This section applies equally to the adjacent lands. For the purpose of this section, adjacent lands means those lands contiguous to a specific natural heritage feature or area where it is likely that development or site alteration would have a negative impact on the feature or area.
- (9) Harbourtown Centre: Any development located within the Harbourtown Centre.

(10) Propane: Any propane transfer station.

(11) Any development on property located on Tunnel Island, north of Lakeview Drive and owned or controlled by the City of Kenora.

(12) Any new development of, or conversion to, a community based care facility, school, place of worship, private social facility, hospital, cultural facility or community centre.

(13) Any new development of or conversion to community homes, residential care facilities, detoxification centres, recovery homes, crisis care shelters, corrections residences or community support houses as defined in Section 14 of this By-law.

(14) Any development of real property designated under the Ontario Heritage Act where the addition or alteration has the effect of adding one or more dwelling units, adding more than 100 square metres of building area or altering site grading; and any development of new buildings or additions more than 100 square metres on lands abutting a real property designated under the Ontario Heritage Act.

(15) Any development of a commercial outdoor recreational facility such as a campground, swimming pool or amusement park.

(16) Any industrial development including, but not limited to, the lands known as the City of Kenora Industrial Park per Schedule B to this By-law.

3. EXEMPTIONS

The following classifications of development shall be exempt from Site Plan Control:

(a) Developments which upon, preliminary review by the City of Kenora's Planning Administrator and/or the Chief Building Official, or in their absence, or in conjunction with, the Operations Manager, determine that the development complies with Municipal By-laws and is beyond the intent of this By-law or the scope of Section 41 of The Planning Act, R.S.O. 2001, Chapter P-13.

- (1) Notwithstanding Section 2.8 and 2.9, regarding development near designated environmental areas and Harbourtown Centre, to the contrary, one or two or three unit dwellings shall be exempt from site plan control, unless site plan control has been made a condition of consent for severance, easement, lease, lot addition or of approval of a subdivision or condominium description;
- (2) Notwithstanding Section 2.8 and 2.9, regarding development near designated environmental areas and in the Harbourtown Centre area, to the contrary, a bed and breakfast with not more than 4 guest bedroom or building or structure accessory thereto;
- (3) Notwithstanding Section 2.8 and 2.9, regarding development near designated environmental areas and in the Harbourtown Centre area, to the contrary, a building or structure accessory to a non-residential use if the gross floor area of the accessory building or structure is less than 10 square metres;
- (4) Works which result from the requirements of the Fire Marshall's Act or an Order issued by the Corporation's Fire Department.
- (5) Where there is an approved Site Plan, any deviation from any dimension respecting the location of buildings and structures shown in the approved plans provided the deviation does not exceed 0.3 metre and, further, provided the deviation does not result in a violation of the requirements of any By-law enacted by the Corporation or other applicable law.
- (6) Interior building alterations which do not involve a change in major occupancy as defined by the Ontario Building Code.

- (7) Signs, which are not erected as part of a commercial development, and temporary construction buildings placed in accordance with any applicable By-law.
- (8) A utility installation having a gross floor area of less than 10 square metres
- (9) Any change to the public parking area in a commercial parking lot necessary to provide handicapped parking or an authorized sign required by By-law, provided the change is accommodated within an area of the public parking area used for the parking of motor vehicles or vehicular access to an area used for the parking of motor vehicles,
- (10) Any change to the following developments:
 - (i) bed and breakfast with not more than 4 guest bedrooms,
 - (ii) group home that accommodates 10 or less people not including staff, within one building;
 - (iii) one-unit dwelling,
 - (iv) triplex dwelling,
 - (v) two-unit dwelling,
 - (vi) involving a swimming pool, deck, landscaping, site works including driveways, or an outdoor recreational structure that serves the development.

4. DELEGATION OF AUTHORITY

(1) The City of Kenora's Planning Administrator and the Chief Building Official, or in their absence, the Operations Manager, are hereby delegated as being appointed officers of the City to exercise Council's powers or authority under section 41 of the Planning Act, R.S.O. 2001, c.P.13, as amended, to approve plans and drawings, to impose conditions and to require agreements.

(2) Notwithstanding the provisions of Section 5(1) of this By-law, where a development is referred back, or requested to be referred back, to Council, Council's power and authority with respect to all powers or authority under section 41 of the Planning Act, shall be retained, unless Council elects to delegate same to the Property and Planning Committee.

(3) Except for the exemptions listed in Section 3 above, no persons shall undertake any development in the City of Kenora until City Council or the Ontario Municipal Board, in accordance with Section 41 of the Planning Act, has approved of the plans and any required Agreements have been entered into respecting matters set out in Section 41 of the Planning Act, R.S.O. 2001, Chapter P-13 as amended.

5. APPROVAL AUTHORITY

Notwithstanding the provisions of Section 4 (1) of this By-law, the Property and Planning Committee of Council shall retain all powers and authority under Section 41 of the Planning Act where:

(1) The City of Kenora's Planning Administrator and/or the Chief Building Official at his/her sole discretion refers the matter to the Committee; or

(2) The applicant requests in writing that the matter be referred to the Committee; or

(3) Any member of City Council may make a request in writing, to the Operations Manager, that the request for Site Plan Control Approval be referred to the Property and Planning Committee. Upon receipt of such request, the Operations Manager, or, in the absence of the Manager, Planning Administrator and/or the Chief Building Official, shall refer the matter to the Planning and Property Committee; or

(4) Notice of receipt of an Application for Site Plan Control Approval shall be circulated to the Mayor and members of City Council at the same time as it is circulated to the internal technical departments and external agencies for review and comment; or

(5) The Property and Planning Committee, at the time of consideration of an Application for Official Plan Amendment and/or Zone Change, may pass a resolution requesting that the development proposal be subject to Site Plan Control and/or that the Application be referred to the Committee for approval.

6. AGREEMENTS

(1) Council's authority under Section 41(7)(c) of the Planning Act to require an owner to enter into an agreement with The Corporation of the City of Kenora and the authority to approve the form of agreement is hereby delegated to the Chief Building Official or Planning Administrator or the Operations Manager and they are hereby authorized to recommend execution of any agreement or amendments thereto which may be required pursuant to the provisions of this By-law;

(2) The Mayor or Clerk is hereby authorized to execute on behalf of The Corporation of the City of Kenora under corporate seal any agreement which may be required pursuant to the provisions of this By-law upon the written recommendation of the Chief Building Official or Planning Administrator, the Operations Manager or the Property and Planning Committee or City Council, as the case may be;

(3) Where the matter has been referred to the Property and Planning Committee pursuant to Section 6 of this By-law, the Planning Committee shall exercise the same authority as provided for in Section 6(1) and 6(2) of this By-law with the necessary modification and such actions shall be evidenced by way of resolutions passed by the Committee;

(4) Registration of Agreement: Any agreement or amendment thereto entered into in accordance with this By-law, shall be registered against the title of the land to which it applies;

(5) Section 427 of the Municipal Act, R.S.O. 2001 Chapter M.45, applies to any requirements made under clauses 7(a) and (b) of Section 41 of the Planning Act and to any requirements made under an agreement entered into under Clause 7(c) of Section 41 of the Planning Act, so that, in default of anything being done pursuant to those sections and agreements by the person required to do it, it may be done at his expense and the expense may be recovered in like manner as municipal taxes.

7. EXECUTION OF AGREEMENTS

The Mayor and City Clerk of the City of Kenora are authorized to execute any agreement required pursuant to this by-law and affix the corporate seal.

8. LIENS

(1) When Council causes any work to be done pursuant to any approval provided for in this by-law, the City shall have a lien for any amount expended by or on behalf of the City and for an administrative fee of ten percent of any amount expended by or on behalf of the City, and the certificate of the City Clerk as to the total amount expended shall be admissible in evidence as prima facie proof of the total amount expended and such total amount together with the administrative fee shall be deemed to be municipal real property taxes and shall be added to the collector's roll of taxes to be collected and shall be subject to the same penalty and interest charges as real property taxes and shall be collected in the same manner and with the same remedies as real property taxes.

(2) Before the certificate of the City Clerk is issued under subsection 8.(1), an interim certificate shall be delivered to the owner of the property that is subject to the lien, as well as to all prior mortgagees or other encumbrances and the affected owner, mortgagees or other encumbrances shall have two weeks from the date of receipt of the interim certificate to appeal the amount shown thereon to Council.

9. PRIOR APPROVALS

Plans, drawings, agreements or other matters approved under Section 41 of the Planning Act by an old municipality shall hereafter be continued, enforced and deemed to have been approved or executed under this by-law.

LETTERS OF UNDERTAKING

9. (1) In the case of a residential development, a letter of undertaking generally in the form shown at Schedule 1 may be provided as an alternative to an agreement where, (a) easements or conveyances are not required to be made to the City after issuance of the building permit, (b) special measures for the protection of existing private trees are not required, (c) the owner is not required to enter into other related development agreements with the City after the issuance of the building permit, and (d) special conditions have not been imposed that require an agreement for purposes of enforcement and notification of subsequent owners of the conditions.

(2) In the case of non-residential development, a letter of undertaking generally in the form shown at Schedule 1 may be provided as an alternative to an agreement where,

- (a) easements or conveyances are not required to be made to the City after issuance of the building permit,
- (c) the owner is not required to enter into other related development agreements with the City after the issuance of the building permit,
- (d) special conditions have not been imposed that require an agreement for purposes of enforcement and notification of subsequent owners of the conditions, and
- (e) the total amount of securities to be provided to the City does not exceed \$5,000.

10. ADMINISTRATION

(1) Issuance of Building Permits

(a) Notwithstanding any provisions of the Building By-law or any other By-law of the Corporation to the contrary, no building permit shall be issued until the plans and drawings and any such agreements required by the Municipality for such development have been approved by Council, its delegate, or where a referral has been made to the Ontario Municipal Board or so ordered by a Court of competent jurisdiction;

(b) Nothing in this By-law shall prevent development on any lands subject to this By-law where such development is proceeding in accordance with a valid building permit which was issued by the Corporation prior to the passing of this By-law.

(2) Violations and Penalties

(a) Subject to Section 2, no person shall deviate from the plans approved pursuant to this By-law;

(b) Any person who contravenes any of the provisions of Section 41 of the Planning Act, or its successors thereto, or the provisions of this By-law is guilty of an offence and on conviction is liable to the penalties provided for in Section 67 (1) and (2) of the Planning Act, or its successors thereto, as follows:

i) Where a person is convicted, and, if the person is a corporation, every director or officer of the corporation who knowingly concurs in the contravention, the maximum penalty that may be imposed is:

- a) on a first conviction, to a fine of not more than \$25,000; and
- b) on a subsequent conviction, to a fine or not more than \$10,000 for each day or part thereof upon which the contravention has continued after the day on which the person was first convicted.

ii) Where a corporation is convicted, the maximum penalty that may be imposed is:

- a) on a first conviction, to a fine of not more than \$50,000; and
- b) on a subsequent conviction, to a fine or not more than \$25,000 for each day or part thereof upon which the contravention has continued after the day on which the corporation was first convicted.

(3) Validity

If any section, clause or provision of this By-law is, for any reason, declared by a Court of competent jurisdiction to be invalid, the same shall not affect the validity of the By-law as a whole or any part hereof other than the section, clause or provision so declared to be invalid. It is hereby declared to be the intention that the remaining sections, clauses and provisions of this By-law shall remain in full force and effect until repealed, notwithstanding that one or more provisions hereof shall have been declared to be invalid.

(4) Interpretation

For the purposes of this By-law, words used in the present tense also include the future; words in the singular also include the plural and words in the plural include the singular number; words in the neuter gender include the masculine and the feminine; and the word "shall" is mandatory.

(5) Imperial Values

Only the values provided with metric units of measure which appear in the By-law are official.

(6) Financial Securities

Where an agreement is required pursuant to Section 6. of this By-law, and said agreement requires the submission of financial securities to ensure the satisfactory completion/maintenance of the works required by the Agreement and approved plans listed therein, the amount of the financial security shall be calculated on the basis of the total value of construction, as follows:

- 10% of the first \$500,000.00 of the total value of construction; plus
- 1% of the balance of the value of construction in excess of \$500,000.00.

The total value of construction shall include any proposed buildings, site grading, storm water management facilities, landscaping and paving works, sidewalks, fences, retaining walls, on-site lighting, accessory buildings, or similar required works as shown on the approved plans.

(7) Costs

Unless otherwise negotiated, and approved by Council, payment of all fees/costs associated with the agreement, or the works required within the agreement, shall be the responsibility of the Applicant/property owner.

11. SCHEDULE

Schedule 1 and Schedule A forms part of this by-law.

12. REPEAL

By-law No.63-2010 is hereby repealed.

13. SHORT TITLE

This by-law may be cited as the Site Plan Control By-law, 2010.

14. DEFINITIONS

In this By-law, unless the context requires otherwise, the following definitions and interpretations shall apply:

- (1) **Building By-law** - means any By-law of the Corporation passed pursuant to the *Building Code Act*, as amended;
- (2) **Building Permit** - means a permit required by the Building By-law;
- (3) **Commercial Parking Lot** - means an open area, including any related aisles, parking spaces, ingress and egress lanes, other than a public street or public lane or parking structure, used for the temporary parking of five or more motor vehicles and available for the public and/or private use, whether or not for compensation or as an accommodation for tenants, employees, clients or customers, other than parking areas which are accessory to a permitted use on the same lot. A commercial parking lot shall have its principal access to a public street or public laneway and shall constitute the main use of the lot;
- (4) **Commercial Parking Structure** – means a partially open and/or enclosed area, including any related aisles, parking spaces, ingress and egress lanes, other than a public street or public lane, used for the temporary parking of five or more motor vehicles and available for public and/or private use, whether or not for compensation or as an accommodation for tenants, employees, clients or customers, other than parking areas which are accessory to a permitted use on the same lot. A commercial parking structure shall have its principal access to a public street or public laneway and shall constitute the main use of the lot;
- (5) **Committee** - means the Property and Planning Committee of the City of Kenora;
- (6) **Corporation** - means The Corporation of the City of Kenora;
- (7) **Council** - means the Municipal Council of the Corporation of the City of Kenora;
- (8) **Community Home** - means a community-based group living arrangement, in a single housekeeping unit, for up to a maximum of seven (7) individuals, exclusive of staff and/or receiving family, who are receiving care consistent with their needs. A Community Home is licensed, funded or approved by the Province of Ontario. Community Homes may provide an eighth bed on an emergency basis which shall be occupied for a maximum of thirty (30) days;
- (9) **Community Support House**- means a community-based group living arrangement, in a single housekeeping unit, for persons from out of the City requiring primarily short term accommodation, which may include incidental counselling services. A Community Support House is intended to provide accommodation for the relatives and friends of persons who may be incarcerated in a local penal institution or who may be receiving treatment in a local medical facility. A Community Support House is licensed, funded or approved by the Province of Ontario;
- (10) **Corrections Residence**- means a group living arrangement, in a secure facility for persons who have been placed on probation, who have been released on parole, who are admitted to the facility for correctional or rehabilitation purposes or who are awaiting trial, and live together under responsible twenty-four (24) hour secure supervision consistent with the requirements of its residents and accepted standards for secure detention. A Corrections residence is licensed, funded or approved by the Province of Ontario or the Federal Government;
- (11) **Crisis Care Shelter** - means a group living arrangement, in a single housekeeping unit, for persons in a crisis situation requiring shelter, protection, assistance, counselling or support and in which it is intended that short term accommodation of a transient nature be provided. A Crisis Care Shelter is licensed, funded or approved by the Province of Ontario;

(12) **Day Care Centres** – A premises as defined by the Day Nurseries Act, RSO, 2001, that receives more than five children primarily for the purpose of providing temporary care or guidance (or both) for a continuous period not exceeding 24 hours, and the children are:

- a) under 10 years of age; or
- b) under 18 years of age if the day nursery will be for children with a developmental disability. under ten years of age in all other cases.

(13) **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 laying out and establishment of a commercial parking lot or of sites for the location of three or more trailers or of sites for the construction, erection or location of three or more land lease community homes as defined in subsection 46 (1) of the *Planning Act* R.S.O. 2001, c. P.13, s. 41 (1); 1994, c. 4, s. 14; 2002, c. 17, Sched. B, s. 14 (1).

(14) **Detoxification Centre**- means an institution or single housekeeping unit in which persons who are addicted to chemical substances and/or alcohol are admitted for withdrawal, treatment and/or rehabilitation and live together under responsible twenty-four hour supervision consistent with the requirements of its residents. A Detoxification Centre is licensed, funded or approved by the Province of Ontario and shall be registered with the City of Kenora;

(15) **Drawing** - means a graphic rendering, bearing a drawing number, date or date of revision and drawn to scale, showing plan, elevation and cross-section views for each industrial and commercial building to be erected and for each residential building containing twenty-five or more dwelling units to be erected, which is sufficient to display:

- (a) the massing and conceptual design of the proposed building;
- (b) the relationship of the proposed building to adjacent buildings, streets and exterior areas to which members of the public have access; and
- (c) the provision of interior walkways, stairs and escalators to which members of the public have access from streets, open spaces and interior walkways in adjacent buildings.

(16) **Erect** - means the carrying out of any activity within the meaning of **Development** herein;

(17) **Land** - includes lands, tenements, and hereditments, and any estate or interest therein, and any right or easement affecting them, and lands covered with water and any right or easement affecting them;

(18) **Land Lease Community Home** - means any dwelling that is a permanent structure where the owner of the dwelling leases the land used or intended for use as the site for the dwelling, but does not include a mobile home;

(19) **Mixed Commercial/Residential Development** - means a building or structure which is used for a mixture of commercial and residential uses, where the entire ground floor of such building or structure shall be used for commercial purposes;

(20) **Municipal Act** - means the *Municipal Act*, R.S.O. 2001, Chapter M.45, and any amendments thereto;

(21) **Person** - includes any association, firm, partnership, syndicate, company, Corporation, its agents or trustee, and the heirs, administrators, executors, assigns and other legal representatives of such person to whom the context may apply according to law;

(22) **Plan** - means a formal drawing, bearing a drawing number, date or date of revision and author's registration stamp drawn to scale and showing;

- (a) the location of all buildings and structures to be erected;
- (b) the location of all facilities and works to be provided in conjunction with (1) above; and
- (c) all facilities and works required by Council pursuant to Section 41 of the Planning Act, R.S.O. 2001, Chapter P-13 as amended;

(23) **Planning Act** - means the Planning Act, R.S.O. 2001, Chapter P-13 as amended;

(24) **Recovery Homes** - means a group living arrangement, in a single housekeeping unit that is developed for the treatment and education of persons with alcohol or drug related problems and/or dependencies. Recovery Homes provide a continuum of care through short-term or long-term residential programs offering a wide variety of therapies dealing with the individual's physical, social, psychological, occupational, spiritual and nutritional needs. Recovery Homes shall provide responsible twenty-four (24) hour supervision, consistent with the needs of the residents. A Recovery Home is licensed, funded or approved by the Province of Ontario;

(25) **Residential Care Facilities** - means a community based group living arrangement, in a single housekeeping unit, for eight (8) or more individuals, exclusive of staff and/or receiving family, who are receiving care and/or supervision consistent with their needs. A Residential Care Facility is licensed, funded or approved by the Province of Ontario;

14. That this By-law shall take effect and come into force upon third and final reading thereof;

By-law read a First and Second Time this 14th day of October, 2010

By-law read a Third and Final Time this 14th day of October, 2010

The Corporation of the City of Kenora:-

.....MAYOR
Leonard P. Compton

..... D/Clerk
Heather L. Kasprick