

The Corporation of the City of Kenora

By-Law Number 162 - 2023

A By-law to require the conveyance of land for park or other public recreation purposes as a condition of the development or redevelopment of land within the City of Kenora or the payment of money in lieu of such conveyance, pursuant to the Planning Act, RSO 1990, c P.13, as amended.

WHEREAS Sections 42, 51.1, and 53 of the Planning Act, RSO 1990, c P.13, as amended authorizes the Council of the Municipality to require, by By-law, the conveyance of land for park or other public recreational purposes as a condition of the development or redevelopment, the subdivision of land, or the granting of a consent within the Municipality;

AND WHEREAS Sections 42 and 51.1 of the Planning Act, RSO 1990, c P.13, as amended further provide for an Alternative Parkland Rate of up to one ("1") hectare for each three hundred ("300") residential units proposed for Development or Redevelopment provided the municipality has an official plan that contains specific policies dealing with the provision of lands for park and other public recreational purposes;

AND WHEREAS Sections 42 and 51.1 of the Planning Act, RSO 1990, c P.13, as amended further provides that if a rate authorized by subsection (1) applies, the Council of the Municipality may require the payment of money in lieu of the value of the land otherwise required to be conveyed;

AND WHEREAS The Corporation of the City of Kenora has an Official Plan in effect that contains specific policies dealing with the provision of lands for park or other public recreational purposes and the use of the alternative requirement authorized under section 42(3) of the *Planning Act*;

AND WHEREAS Sections 23.1 to 23.3 of the Municipal Act authorize the delegation of powers or duties of the municipality subject to restrictions;

NOW THEREFORE the Council of The Corporation of the City of Kenora enacts as follows:

Short Title:

1. This By-law may be referred to as the Parkland Dedication By-law.

Severability:

2. If a court of competent jurisdiction declares any provision or part of a provision of this By-law to be invalid, illegal, unenforceable or of no force and effect, it is the intention of Council in enacting this By-law that the remainder of this By-law will continue in force and be applied and enforced in accordance with its terms to the fullest extent possible according to law.

Definitions:

3. The following definitions apply in this By-law:

- a) "Board of Education" has the same meaning as "board" as that term is defined in the Education Act, RSO 1990, c E.2, as amended, or any successor thereto;
- b) "Building" means a building as defined in the Ontario Building Code, 0. Reg. 332/12, as amended, or any successor thereto;
- c) "Building Code Act" means the Building Code Act, SO 1992 chapter 23 and includes any amendments thereto, successor legislation, and where the context requires includes precursor legislation;
- d) "By-law" means this Parkland Conveyance By-law;
- e) "Cash-in-lieu" means a payment of money for park or other public recreational purposes which is collected in lieu of a conveyance of land which would otherwise be required to be conveyed pursuant to the parkland provisions of the Planning Act as incorporated into this by-law;
- f) "College" means a college established under the Ontario Colleges of Applied Arts and Technology Act, 2002, as amended, or any successor thereto;
- g) "Cemetery" means land set aside to be used for the interment of human remains and includes a mausoleum, columbarium or other structure intended for the interment of human remains;
- h) "City" means the City of Kenora or The Corporation of the City of Kenora as the context dictates;
- i) "Commercial purposes" means the use of non-residential land, buildings or structures for offices, sales and services, other than for Industrial, or Institutional purposes;
- j) "Council" means the Council for the City of Kenora;
- k) "Develop" means:
 - i) the construction, erection or placing of one or more buildings on land
 - ii) the making of an addition or alteration to a building that has the effect of substantially increasing the size by increasing the Gross Floor Area of the building by fifty percent (50%) or more, or by substantially increasing the usability thereof
 - iii) the addition of one or more new Dwelling Unit(s)
 - iv) the laying out and establishment of a commercial parking lot
 - v) "Developed", "Development", "Redevelop", "Redeveloped" and "Redevelopment" have their corresponding meanings;
- l) "Dwelling unit" means any property that is used or designed for use as a domestic establishment in which one or more persons may sleep and prepare and serve meals;
- m) "Gross Floor Area" has the same meaning given to Floor Area, Gross in the Zoning By-law;
- n) "Industrial purposes" means the use of land, buildings or structures used for or in connection with:
 - i) manufacturing, producing, fabricating, processing, storing or distributing goods;
 - ii) research or development in connection with manufacturing, producing, fabricating or processing goods;

- iii) retail sales by a manufacturer, producer, fabricator or processor of goods they manufactured, produced, fabricated or processed, if the retail sales are at the site where the manufacturing, producing, fabricating or processing takes place; or,
- iv) office or administrative purposes, if they are,
 - i. i. carried out with respect to manufacturing, producing, fabricating, processing, storing or distributing of goods; and,
 - ii. in or attached to the building or structure used for that manufacturing, producing, fabricating, processing, storing or distributing;
- o) "Institutional purposes" means the use of land, buildings or structures for a public or non-profit purpose including a religious, charitable, educational, health or welfare purpose, and without limiting the generality of the foregoing, may include such uses as schools, hospitals, places of worship, recreation facilities, community centres and government buildings;
- p) "Land" means, for the purposes of this By-law, the lesser of the area defined as:
 - i) The whole of a parcel of property or parcels of property associated with the Development or Redevelopment; or
 - ii) The whole of a lot or lots or a block or blocks on a registered plan of subdivision or a unit or units within a vacant land condominium that is associated with the Development or Redevelopment.
 - iii) For Industrial or Commercial Redevelopment, the portion of property where the Development or Redevelopment is occurring.
- q) "Market Value" means the value of the Land determined in accordance as nearly as may be with section 14 of the Expropriations Act, RSO 1990 c E.26, as amended or any successor thereto, as of the day before the day of the issuance of the first building permit for the Development;
- r) "Parkland" means land for parks and other public recreational purposes;
- s) "Planning Act" means the Planning Act, RSO 1990 c P.13 and includes any amendments thereto, successor legislation, and where the context requires includes precursor legislation;
- t) "Place of Worship" means a premises used by one or more religious groups for the practice of religious services;
- u) "Qualified Appraiser" means a member of the Appraisal Institute of Canada in good standing;
- v) "Record of Site Condition" means a record of site condition under Part XV.1 of the Environmental Protection Act, RSO 1990 c E.19, as amended, or any successor thereto;
- w) "Zoning By-law" means the City of Kenora Zoning By-law No. 101-2015, as amended, or any successor thereto.

General Requirement:

4. The entirety of the City is hereby established as an area for which the conveyance of a portion of Land to be Developed or Redeveloped, or the payment of money in lieu of such conveyance, shall be required as a condition of Development or Redevelopment.
5. No person shall Develop or Redevelop Land within the City unless they have first conveyed a portion of the Land to the City for Parkland, or paid money in lieu of such conveyance, in accordance with this By-law.

Delegation of Authority — Conveyance of a Portion of Land or Money in Lieu:

6. The authority to determine whether a conveyance of a portion of the Land associated with Development or Redevelopment for Parkland or the payment of money in lieu of such conveyance shall be required is hereby delegated to the Director of Building and Planning, any successor thereto, or an officer or employee of the City designated by the Director of Building and Planning, or their successor.
7. The determination of whether a conveyance of a portion of the Land for Parkland or the payment of money in lieu of such conveyance shall be required shall be made in accordance with this By-law, the relevant policies of the City's Official Plan, and generally in accordance with any other policies and guidelines established by the City from time to time for that purpose.
8. Council retains the authority to determine at its discretion:
 - a) whether a conveyance of a portion of the Land for Parkland or the payment of money in lieu of such conveyance shall be required; and
 - b) an alternative process to that set out in this By-law to determine the Market Value of the Land.

Where Conveyance of a Portion of the Land Required:

9. Where it has been determined that a portion of the Land will be required to be conveyed to the City as Parkland, the following shall apply:
 - a) Where Land in the City is to be Developed or Redeveloped for Commercial purposes or Industrial purposes or Institutional purposes, a portion of the Land not exceeding 2% of the total area of the Land shall be conveyed to the City for Parkland.
 - b) Where Land in the City is to be Developed or Redeveloped for residential purposes, the greater of:
 - i) a portion of the Land not exceeding 1hectare (1ha) per three hundred (300) Dwelling Units proposed as part of the Development or Redevelopment, or
 - ii) five percent (5%) of the total area of the Land shall be conveyed to the City for Parkland.
 - c) Where Land in the City is to be Developed or Redeveloped for any use other than for Commercial purposes, Industrial purposes, Institutional purposes or residential purposes, a portion of the Land not exceeding five percent (5%) of the total area of the Land shall be conveyed to the City for Parkland.
10. Where a Development or Redevelopment will include a mix of uses, and two or more of the requirements under section 9 a) - c) of this By-law may apply to the Development or Redevelopment, the area of the Land required to be conveyed to the City for Parkland shall be determined solely in accordance with whichever single requirement under section 9 a) — c) of this By-law applies to the Development or Redevelopment which results in the greatest total area of the Land being required to be conveyed to the City for Parkland. In calculating a single requirement under each of section 9 a) — c) of this By-law only the portion of Land or Dwelling Units associated with the purposes listed in the applicable subsection shall be used for calculating the total area of Land required to be conveyed to the City for Parkland.

Acceptance of Land for Park or Other Public Recreational Purposes:

11. Any portion of Land required to be conveyed to the City for Parkland shall be:
 - a) Free of encumbrances except as may be satisfactory to the City Solicitor; and
 - b) in a condition satisfactory to the City and in accordance with the requirements of the City's Official Plan and other policies respecting the acquisition of real property.
12. The City may require that a Record of Site Condition be filed in respect of the Land prior to accepting the conveyance of a portion of the Land for Parkland required under this By-law.
13. The following shall not be accepted by the City in satisfaction of a requirement to convey a portion of the Land for Parkland under this By-law:
 - a) Areas of Hazard Land as identified in the City of Kenora Official Plan;
 - b) Areas of Land that are required to accommodate stormwater management facilities;
 - c) Areas of Land that are deemed to be contaminated in any way, subject to acceptance by the City pursuant to section 12 of this By-law;
 - d) Areas of Land that are used or proposed to be used for utility corridors or other infrastructure incompatible with their use as a public park; and
 - e) Land that is encumbered by easements or other instruments that would unduly restrict or prohibit public use.
14. Any costs associated with a conveyance of a portion of Land for Parkland purposes required under this By-law, including but not limited to costs related to the preparation and registration of documents, surveys or reference plans, and any applicable taxes, shall be borne by the person seeking to Develop or Redevelop the Land at no cost to the City.
15. Any requirement to convey a portion of Land to the City for park and other recreational purposes is fulfilled only when title of that portion of the Land is transferred to the City.

Payment of Money in Lieu of Conveyance:

16. The City may determine, in its discretion, whether it seeks a conveyance of a portion of Land for Parkland, a payment of money in lieu of conveyance of a portion of Land for Parkland, or a combination of both.
17. Where it has been determined that the payment of money will be required in lieu of a conveyance of a portion of the Land for Parkland, the following shall apply:
 - a) Where Land in the City is to be Developed or Redeveloped for Commercial purposes or Industrial purposes or Institutional purposes, the payment required in lieu of the conveyance of a portion of the Land for Parkland shall be two percent (2%) of the Market Value of the Land.
 - b) Where Land is to be Developed or Redeveloped for residential purposes, the payment required in lieu of the conveyance of a portion of the Land for Parkland shall be the greater of:

- i) the equivalent Market Value of 1 hectare (1 ha) per five hundred (500) Dwelling Units proposed to be added by the Development or Redevelopment, or;
 - ii) Five percent (5%) of the total Market Value of the Land.
- c) Where Land in the City is to be Developed or Redeveloped for any use other than Commercial purposes, Industrial purposes, Institutional purposes or residential purposes, the payment required in lieu of the conveyance of a portion of the Land for Parkland shall be five percent (5%) of the Market Value of the Land.

18. Where a Development or Redevelopment will include a mix of uses, and two or more of the requirements under section 17 a) - c) of this By-law may apply to the Development or Redevelopment, the payment required in lieu of a conveyance of a portion of the Land to the City for Parkland shall be determined in accordance with whichever single requirement under section 17 a) — c) of this By-law applies to the Development or Redevelopment which will result in the greatest total payment to the City being required. In calculating a single requirement under each of section 17 a) — c) of this By-law only the portion of Land or Dwelling Units associated with the purposes listed in the applicable subsection shall be used for calculating the payment required in lieu of a conveyance of a portion of the Land to the City for Parkland.

Maximum permitted dedication requirement:

19. In the case of land proposed for development or redevelopment where the rate of one hectare per three-hundred dwelling units is applied, or where a cash-in-lieu payment of the equivalent market value of one hectare per five-hundred dwelling units is required, the required conveyance or payment in lieu may not exceed:
- a) 10 per cent of the land or the value of the land in the case of property that is five hectares or less in area, and
 - b) 15 per cent of the land or the value of the land in the case of property that is greater than five hectares in area.

Determination of Market Value:

20. The owner of the Land shall obtain and furnish the City with an appraisal of the Market Value of the Land from a certified professional appraiser of real estate who is designated as an Accredited Appraiser by the Appraisal Institute of Canada (AIC), and who is a member in good standing of the AIC, at no expense to the City. All appraisals must comply with the current Canadian Uniform Standards of Professional Appraisal Practice (CUSPAP) as adopted by the Appraisal Institute of Canada. No limiting conditions will be accepted that restrict distribution of the appraisal report, in part or in whole, to owner(s) of the subject property, any representative of the owner, or representative of the City.

21. The value of the land shall be determined as of:

- a) The date before granting draft approval for development or redevelopment in the case of a draft plan of subdivision or draft condominium declaration; or
- b) The date before the granting of provisional consent in the case of a consent application; or
- c) The date before the issuance of Site Plan Control approval for development or redevelopment; or

- d) The date before the issuance of a building permit for the development or redevelopment in all other cases. In cases where more than one building permit is required for the development or redevelopment, the value of the land shall be determined as of the day before the first permit is issued.
22. Where the City is satisfied with the Market Value determined by the appraisal submitted in accordance with section 20 of this By-law, that value shall be used in the determination of the payment required.
23. Where the City is not satisfied with the Market Value determined by the appraisal submitted in accordance with section 20 of this By-law, the City may obtain its own appraisal of the Market Value of the Land from a certified professional appraiser of real estate who is designated as an Accredited Appraiser by the Appraisal Institute of Canada (AIC), and who is a member in good standing of the AIC, which appraisal shall be shared with the owner of the Land.
24. Where the City has obtained an appraisal under section 23 of this By-law, the owner of the Land may agree to fix the Market Value of the Land in accordance with the appraisal obtained by the City, or the City and the owner of the Land may agree to fix the Market Value of the Land at another amount, which shall in no case be less than the lowest estimate of Market Value in either appraisal or more than the highest estimate of Market Value in either appraisal.
25. Where the City has obtained an appraisal under section 23 of this By-law, and the City and the owner of the Land cannot agree on the Market Value of the Land to be used in determining the required payment, the Market Value may be fixed in accordance with subsections 42(10) to 42(13) of the Planning Act.
26. Appraisals submitted to or obtained by the City for the purposes of this By-law shall be considered valid for a maximum period of six (6) months from the date the appraisal was completed, or such less time as may be specified in the appraisal.

Requirement of Dedication or Payment Before Approval or Permit

27. Any payment of money or conveyance of land required to be made to the City pursuant to the provisions of this By-law shall be made prior to:
- a) The granting of draft approval for development or redevelopment in the case of a draft plan of subdivision or draft condominium declaration; or
 - b) The granting of a provisional consent in the case of a consent application; or
 - c) The issuance of a building permit in respect of the development or redevelopment or where more than one building permit is required for the development or redevelopment, prior to the issuance of the first permit.

Form of Payment:

28. Any payment of money required under this By-law shall be made in the form of certified cheque, bank draft, electronic funds or wire transfer or another form acceptable to the City.
29. Payment of any amount required under this By-law does not include any applicable taxes, which may be added to the payment if required.

Special account:

30. All money received by the City in lieu of the conveyance of a portion of Land for Parkland, or received on the sale of any property that has been conveyed to the City pursuant to this By-law shall be paid into a special account established in accordance with section 42(15) of the Planning Act, and only as permitted under the Planning Act.
31. The City Treasurer shall give Council the financial statement of any special account established pursuant to this By-law in accordance with the requirements of subsections 42(17) of the Planning Act.

Other Powers Not Affected:

32. Nothing in this By-law is intended to or has the effect of restricting, limiting and/or altering the authority of Council to require a conveyance for Parkland or the payment of money in lieu of such conveyance as a condition of the approval of a plan of subdivision in accordance with section 51.1 of the Planning Act, or the authority of Council, the Committee of Adjustment or any successor body thereto established under section 44 of the Planning Act, to require a conveyance for Parkland or the payment of money in lieu of such conveyance as a condition of the approval of a consent given under section 53(12) of the Planning Act.

Where land conveyed:

33. If land has been conveyed or is required to be conveyed for park or other public purposes or a payment in lieu has been received or is owing to it under this By-law or a condition imposed under section 51.1 or 53 of the Planning Act no additional conveyance or payment in respect of the land subject to the earlier conveyance or payment may be required in respect of subsequent development or redevelopment unless,
- a) there is a change in the proposed development or redevelopment which would increase the density of development; or
 - b) land originally proposed for development or redevelopment for commercial or industrial purposes is now proposed for development or redevelopment for other purposes.

Reduction for Previous Conveyance or Payment in Lieu:

34. Where section 32 of this By-law applies, and a change referred to in (a) or (b) of that section has occurred, any conveyance that has previously been made or is required to be made for Parkland, or any payment of money that has previously been made or is required to be made in lieu of such conveyance, as the case may be, shall be deducted from the portion of the Land required to be conveyed for Parkland or the payment of money in lieu of such conveyance required under this By-law.

Exemptions from General Requirement:

35. This By-law does not apply to the following classes of Development or Redevelopment:
- a) Development or Redevelopment of Land owned by and/ or used for the purposes of the City;
 - b) Development or Redevelopment of Land owned by and used by a Board of Education;
 - c) Development or Redevelopment of Land owned by a college for non-commercial institutional and/or educational purposes;

- d) Development or Redevelopment of a hospital as defined in Section 1 of the Public Hospitals Act,
- e) Development or Redevelopment of Land owned by and used for the purposes of the Ontario Provincial Police;
- f) The enlargement of an existing residential dwelling unit;
- g) Development or redevelopment consisting of a total of ten (10) or fewer dwelling units on a single lot;
- h) Development or Redevelopment consisting solely of a secondary dwelling unit permitted by the City's Official Plan or Zoning By-law;
- i) Development or Redevelopment that consists solely of a temporary building or structure;
- j) Development or Redevelopment that consists solely of the replacement of any building destroyed due to fire or other accidental cause beyond the control of the owner of the Land, provided that no intensification or change in use is proposed, including but not limited to increasing the total number of Dwelling Units, or increasing the size or usability of the Gross Floor Area of the original building;
- k) Development or Redevelopment of a Place of Worship or of a cemetery exempt from taxation under the Assessment Act, R.S.O. 1990, c. A.31, or any successor thereof;
- l) Such other land uses, projects or specific Development or Redevelopment as may be exempted by resolution of Council.

Now Therefore the Council of the City of Kenora hereby enacts as follows:-

1. That this B-law shall come into force and take effect on December 20, 2023.
2. That this By-law shall take effect and come into force upon third and final reading.

By-law read a First and Second Time this 20th day of December, 2023

By-law read a Third and Final Time this 20th day of December, 2023

The Corporation of the City of Kenora:-

Andrew Poirier, Mayor

Kelly Galbraith, Deputy Clerk