

# THE CORPORATION OF THE TOWN OF LAKESHORE

## BY-LAW NUMBER 42-2014

### BEING A BY-LAW TO PROVIDE FOR THE DEDICATION OF PARKLAND OR THE PAYMENT OF CASH IN LIEU THEREOF AS A CONDITION OF DEVELOPMENT OR REDEVELOPMENT

**WHEREAS** section 42 of the *Planning Act* 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* provides that an approval authority may impose, as a condition of the approval of a plan of subdivision, that land be conveyed to the local municipality 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** section 53 of the *Planning Act* provides that section 51.1 of the *Planning Act* also applies to the granting of consents;

**AND WHEREAS** in the case of land proposed for Development or Redevelopment for residential purposes, pursuant to the *Planning Act*, a municipality may require that such land be conveyed at the rate of up to one hectare for each 300 Dwelling Units, provided that the municipality has specific policies dealing with the provision of lands for park or other public recreational purposes, and the use of this alternative requirement is included within its Official Plan;

**AND WHEREAS** the Town of Lakeshore has such specific policies dealing with the provision land to be conveyed at the rate of up to one hectare for each 300 Dwelling Units;

**AND WHEREAS** the Council for the Corporation of the Town of Lakeshore wishes to use the provisions of the *Planning Act* for the purposes of acquiring and providing parkland for the use and enjoyment of the residents of the Town of Lakeshore.

**NOW THEREFORE**, the Council of the Corporation of the Town of Lakeshore hereby enacts as follows:

#### Definitions

1. In this by-law:
  - a) **"Agricultural Uses"** has the same meaning as in Lakeshore's Comprehensive Zoning By-law.
  - b) **"Board of Education"** has the same meaning as "board", as defined in the Education Act, R.S.O. 1990, c.E.2, as amended;
  - c) **"CIL"** means cash-in-lieu of parkland otherwise required to be conveyed.
  - d) **"Commercial"** means the use of land, buildings, or structures for a use which is not industrial, and which are used in connection with:
    - i) the selling of commodities to the general public; or
    - ii) the supply of services to the general public; or
    - iii) office or administrative facilities.
  - e) **"Council"** means the Council for the Corporation of the Town of Lakeshore;
  - f) **"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;

- g) **“Dwelling Unit”** means one or more habitable rooms each of which is accessible from the others and which function as an independent and separate housekeeping unit in which separate kitchen and sanitary facilities are provided for the use of the occupants, with a private entrance from outside the building of from a common hallway or stairway inside the building;
- h) **“Gross Floor Area”** has the same meaning as in Lakeshore's Development Charges By-law, as amended.
- i) **“Industrial”** means the use of land, buildings, or structures in connection with:
  - i. manufacturing, producing, or processing of raw goods;
  - ii. warehousing or bulk storage of goods;
  - iii. a distribution centre;
  - iv. a truck terminal; or
  - v. research or development in connection with manufacturing, producing or processing of raw goods;

and includes office uses and the sale of commodities to the general public where such office or retail uses are ancillary to an industrial use, but does not include a building used exclusively for office or administrative purposes unless it is attached to an industrial building or structure as defined above, and does not include a retail warehouse;

- j) **“Institutional”** means the use of land, buildings, or structures for hospitals, correctional institutions and associated facilities, municipal facilities, elementary and secondary schools, colleges, universities, places of worship and ancillary uses, military and cultural buildings, daycare centres, residential care facilities for more than ten persons and long term care centres;
- k) **“Lakeshore”** means the Corporation of the Town of Lakeshore;
- l) **“Mixed Use”** means the physical integration of two or more of the following uses within a building or structure or separate buildings or structures on the lands proposed for Development or Redevelopment: Commercial; Industrial; Institutional; Residential; or any other use not noted herein;
- m) **“Net Area of the Lands”** means the total area of the lands being Developed or Redeveloped, less the area of any lands to be conveyed gratuitously to Lakeshore, the County of Essex, the Essex Region Conservation Authority or the Lower Thames Region Conservation Authority, pursuant to an approval or provisional consent issued in accordance with the *Planning Act*, in support of natural heritage systems, including but not limited to, wetlands, valley and watercourse corridors, tableland woodlands and other environmentally sensitive lands as determined by Lakeshore;
- n) **“Official Plan”** means the Lakeshore Official Plan, as amended.
- o) **“Planning Act”** means the *Planning Act*, R.S.O. 1990, c.P.13, as amended,
- p) **“Redevelopment”** means the removal of a building or structure from land and the further Development of the land or, the expansion or renovation of a building or structure which results in a change in the character or density of the use in connection therewith;
- q) **“Residential”** means the use of land, buildings, or structures for human habitation;
- r) **“Rural Area”** means those areas designated as not being within a settlement area by the Official Plan;
- s) **“Temporary Building or Structure”** means a building or structure constructed or erected or placed on land for a continuous period not exceeding eight (8) months, or an addition or alteration to a building or structure that has

the effect of increasing the total floor area thereof for a continuous period not exceeding eight (8) months;

- t) “**Urban Area**” means those areas designated as being within a settlement area by the Official Plan;

### **Conveyance of Land for Park Purposes**

2. As a condition of Development or Redevelopment of land pursuant to the *Planning Act*, Lakeshore shall require the conveyance of land for park purposes as follows:
  - a) In the case of lands proposed for Residential uses, at a rate of five per cent (5%) of the land being Developed or Redeveloped, or one (1) hectare for each three hundred (300) Dwelling Units proposed, whichever is greater;
  - b) In the case of lands proposed for Commercial, Industrial or Institutional uses, land in the amount of two per cent (2%) of the land to be Developed or Redeveloped;
  - c) In the case of lands proposed for Development or Redevelopment for a use other than those referred to in subsections 2(a) and 2(b) of this by-law, land in the amount of five per cent (5%) of the land to be Developed or Redeveloped;
  - d) In the case of a Mixed Use Development or Redevelopment, land in the aggregate, calculated as follows:
    - i) the Residential component, if any as determined by Lakeshore, of the lands being Developed or Redeveloped, shall require the conveyance of land as determined in accordance with subsection 2(a) of this by-law; plus
    - ii) the Commercial, Industrial, or Institutional component of the lands being Developed or Redeveloped, if any as determined by Lakeshore, shall require the conveyance of land as determined in accordance with subsection 2(b) of this by-law; plus
    - iii) the component of the lands proposed for any use other than Residential, Commercial, Industrial or Institutional, if any as determined by the City, shall require the conveyance of land as determined in accordance with subsection 2(c) of this by-law.

### **Location of Conveyance and Condition of Title**

3. The location and configuration of land required to be conveyed pursuant to this by-law shall be as determined by Lakeshore and all such lands shall be free of all encumbrances, including but not limited to such easements which Lakeshore, in its sole and absolute discretion, is not prepared to accept and shall be free of any contamination, including but not limited to any toxic, noxious or dangerous contaminants, and shall otherwise be in a condition satisfactory to Lakeshore.
4. The conveyance of any valleyland or watercourse corridors, woodlands, natural heritage system lands and associated buffers, easements, vista blocks and storm water management ponds, as defined in the Official Plan or any secondary plan adopted under the Official Plan, shall not be considered a conveyance of land for park purposes pursuant to the requirements of section 2 of this by-law.

### **Timing of Conveyance**

5. Where land is required to be conveyed in accordance with section 2 of this by-law, the lands shall be conveyed as follows:
  - a) In the case of Development or Redevelopment to be approved pursuant to sections 51.1 or 53 of the *Planning Act*, the conveyance of land may be required as a condition of approval, and said lands shall be conveyed to Lakeshore either prior to or immediately upon registration of the plan of subdivision or upon the

consent being given, as determined by Lakeshore;

- b) In the case of Development or Redevelopment where land has not been conveyed or has not been required pursuant to sections 51.1 or 53 of the *Planning Act*, Lakeshore shall require the conveyance of land as a condition of Development or Redevelopment prior to building permit issuance in accordance with section 42 of the *Planning Act*.

### **Cash-in-Lieu of Parkland**

- 6. In lieu of requiring the conveyances referred to in section 2 of this by-law, Lakeshore may require the payment of cash to the value of the lands otherwise required to be conveyed, calculated in accordance with the following:
  - a) Where the payment of CIL has been required as a condition of an approval or consent pursuant to sections 51.1 or 53 of the Act, CIL shall be calculated as follows:
    - i. Residential uses in an Urban Area - \$1,200 per lot;
    - ii. Residential uses in a Rural Area - \$600 per lot;
    - iii. Agricultural Uses (eg farm split) - \$600.00 per lot.
  - b) For Residential Development or Redevelopment CIL shall be calculated as follows:
    - i. Residential uses in an Urban Area - \$1,200 per lot; and
    - ii. Residential uses in a Rural Area - \$600 per lot.

### **Timing of CIL Payment**

- 7. CIL shall be paid as follows:
  - a) For Development or Redevelopment where the payment of CIL is required as a condition of an approval or a consent pursuant to either sections 51.1 or 53 of the *Planning Act*, CIL shall be paid prior to registration of the plan of subdivision or prior to the consent being given, as the case may be;
  - b) For Development or Redevelopment where the payment of CIL is not required as a condition of an approval or a consent, pursuant to either sections 51.1 or 53 of the *Planning Act*, CIL shall be paid on a per lot basis prior to the issuance of the building permit for such lot in respect of the Development or Redevelopment in accordance with Section 42 of the *Planning Act*.

### **Credits for Previous Conveyances**

- 8. Notwithstanding sections 2 and 6 of this by-law, if land has been conveyed or is required to be conveyed to Lakeshore for park or other public recreational purposes or CIL has been received by Lakeshore or is owing to it pursuant to a condition imposed pursuant to sections 42, 51.1 or 53 of the *Planning Act*, no additional conveyance or payment in respect of the lands subject to the earlier conveyance or payment will be required by Lakeshore 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 the development; or
  - b) Land originally proposed for Development or Redevelopment for Commercial, Industrial, or Institutional uses is now proposed for Development or Redevelopment for other uses.
- 9. Where there is a claim of previous conveyance or CIL payment, it is the applicant's/owner's responsibility to provide suitable evidence of such previous conveyance or CIL payment, to Lakeshore's satisfaction.
- 10. Land or CIL required to be conveyed or paid to Lakeshore for park or other public recreation purposes pursuant to sections 2 or 6 of this by-law shall be reduced by

the amount of land or CIL previously received by Lakeshore pursuant to sections 42, 51.1 or 53 of the *Planning Act* in respect of the lands being Developed or Redeveloped.

### **Limits of the Lands to be Developed or Redeveloped**

11. For the purposes of calculating the land conveyance or CIL requirements of sections 2 or 6 of this by-law, the following shall be used as the area of the lands being Developed or Redeveloped:
  - a) For Development or Redevelopment of land which does not occur pursuant to section 51 or 53 of the *Planning Act*, the Net Area of the Lands denoted within the plan or drawings;
  - b) For Development or Redevelopment of land which occurs pursuant to section 51 of the *Planning Act*, and for which the conveyance of land or the payment of CIL is required as a condition of approval, the Net Area of the Lands denoted within the approved draft plan of subdivision;
  - c) For Development or Redevelopment of land which occurs pursuant to section 53 of the *Planning Act*, and for which the conveyance of land or the payment of CIL has been required as a condition of approval, the Net Area of the Lands to be severed pursuant to the consent;
  - d) In all other cases, the area of the lands to be Developed or Redeveloped shall be determined by Lakeshore in accordance with the *Planning Act*, and the Net Area of the Lands as determined by Lakeshore shall be used for the purposes of calculating land conveyance or CIL requirements pursuant to sections 2 or 6 of this by-law.

### **Phased Development**

12. Notwithstanding sections 5 and 7 of this by-law, for Development or Redevelopment for which approvals are issued in phases, Lakeshore shall calculate and require the conveyance of land for park purposes or the payment of CIL, in accordance with the provisions of sections 2 and 6 of this by-law, on a phase by phase basis.

### **Parkland Conveyance Agreements**

13. Nothing in this by-law shall limit Lakeshore's ability to enter into a parkland conveyance agreement with one or more landowners for the purposes of assembling parkland. Parkland conveyance agreements entered into by Lakeshore shall include provisions for the conveyance of land for park purposes or CIL, the calculation of which shall be as provided in this by-law.

### **Exemptions**

14. This by-law shall not apply to any of the following:
  - a) Development or Redevelopment of land, buildings or structures owned by and used for the purposes of Lakeshore;
  - b) Development or Redevelopment of land, buildings or structures owned by and used for the purposes of a Board of Education;
  - c) The replacement of any building that is a direct result of destruction due to accidental fire or other accidental cause provided that no intensification or change of use is proposed, including but not limited to an increase in total Dwelling Unit count or Gross Floor Area;
  - d) The enlargement of an existing Dwelling Unit provided that the enlargement does not result in additional Dwelling Units;
  - e) The enlargement of an existing Commercial, Industrial, or Institutional building or structure if the Gross Floor Area is enlarged by 50% or less. The area of the existing building or structure shall be calculated by reference to the first building permit which was issued in respect of the building or structure for which the exemption is sought;

- f) A Temporary Building or Structure; or
- g)Where the total CIL payable for Development or Redevelopment is less than \$100.

**General**

- 15. If a court of competent jurisdiction should declare any section or part of a section of this by-law to be invalid, such section or part of a section shall not be construed as having persuaded or influenced Council to pass the remainder of the by-law and it is hereby declared that the remainder of the by-law shall be valid and shall remain in force.
- 16. The headings in this By-law are for convenience only and do not form part of this By-law.
- 17. This By-law shall come into force and take effect upon the final passing thereof.

**READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 13<sup>th</sup> DAY OF MAY 2014.**

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**Tom Bain, Mayor**

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**Mary Masse, Clerk**