

Municipality of Lakeshore

By-law 81-2022

Being a by-law to provide for the dedication of parkland or the payment 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, 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 Municipality 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 of the Municipality 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 Municipality of Lakeshore;

Now therefore the Council of the Municipality of Lakeshore hereby enacts as follows:

Part 1: Interpretation

Definitions

1. In this by-law:

- (a) **“Board of Education”** has the same meaning as “board”, as defined in the Education Act, R.S.O. 1990, c.E.2, as amended;
- (b) **“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.
- (c) **“Council”** means the Council for the Municipality of Lakeshore;
- (d) **“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;
- (e) **“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;
- (f) **“Gross Floor Area”** has the same meaning as in Lakeshore’s Development Charges By-law, as amended.
- (g) **“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;
- (h) **“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;

- (i) **“Lakeshore”** means Municipality of Lakeshore;
- (j) **“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;
- (k) **“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;
- (l) **“Official Plan”** means the Lakeshore Official Plan, as amended.
- (m) **“PIL”** means payment-in-lieu of parkland otherwise required to be conveyed.
- (n) **“Planning Act”** means the Planning Act, R.S.O. 1990, c.P.13, as amended,
- (o) **“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;
- (p) **“Residential”** means the use of land, buildings, or structures for human habitation;
- (q) **“Rural Area”** means those areas designated as not being within a settlement area by the Official Plan;
- (r) **“Shared Use Agreement”** means an agreement between a Board of Education and Lakeshore for the sharing of buildings and/or property; and
- (s) **“Zoning By-law”** means the by-law passed pursuant to section 34 of the Planning Act.

Rules of Interpretation

- 2. (1) The following rules of interpretation shall be applied to interpretation of this by-law:
 - (a) References to items in the plural include the singular, as applicable.

- (b) The words "include", "including" and "includes" are not to be read as limiting the phrases or descriptions that precede them. Any examples provided are intended to be representative examples and not intended to be an exhaustive list.
- (c) Headings are inserted for ease of reference only and are not to be used as interpretation aids.
- (d) Specific references to laws or by-laws are meant to refer to the current laws applicable at the time that this by-law was enacted and shall be interpreted to include amendments, restatements and successor legislation.
- (e) The obligations imposed by this by-law are in addition to obligations otherwise imposed by law or contract.
- (f) Where this by-law provides metric and imperial units of measure, the metric unit of measure shall prevail. For convenience only, approximate imperial measurements may be provided but are of no force or effect. The abbreviation "mm" stands for millimetres and "m" stands for metres.
- (g) Terms with capitals shall be read with the meaning in section 1 and other words shall be given their ordinary meaning.
- (h) If any court of competent jurisdiction finds any provision of this by-law is illegal or *ultra vires* of the jurisdiction of the Municipality, such provision shall be deemed to be severable and shall not invalidate any of the other provisions of this by-law.
- (i) Nothing in this by-law relieves any Person from complying with any provision of any federal or provincial legislation or any other by-law of the Municipality.
- (j) Where a provision of this by-law conflicts with the provisions of another by-law in force in the Municipality, the more specific by-law shall prevail.

Application

- 3. The provisions of this by-law apply to the entire geographic area of the Municipality of Lakeshore.

Exemptions

- 4. Development or Redevelopment described in the subsections (a) through to and including (f) shall be exempt from the obligations to convey land or make a PIL under Parts 2 and 3 of this by-law:
 - 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, where a Shared Use Agreement exists;

- 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; and
- f) Development or Redevelopment of land, buildings or structures for temporary construction uses as defined by Lakeshore's Zoning By-law.

Part 2: Conveyance of Land for Park Purposes

- 5. Land shall be required to be conveyed to Lakeshore for park purposes as a condition of Development or Redevelopment of land in an amount to be determined in accordance with subsections (a) through to and including (d).
 - a) In the case of lands proposed for Residential uses:
 - i. if the density of the development is 15 units per hectare or less, at a rate of five per cent (5%) of the land being Developed or Redeveloped, or
 - ii. if the density of the development is greater than 15 units per hectare, at a rate of one (1) hectare for each three hundred (300) Dwelling Units proposed.
 - 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 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 (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 (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 Municipality, shall require the conveyance of land as determined in accordance with subsection (d) of this by-law.
- d) In the case of lands proposed for Development or Redevelopment for a use other than those referred to in subsections (a), (b) and (c) of this section, land in the amount of five per cent (5%) of the land to be Developed or Redeveloped.

Location of Conveyance and Condition of Title

- 6. 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.
- 7. A requirement as part of Development or Redevelopment to convey any valley land or watercourse corridors, woodlands, natural heritage system lands and associated buffers, easements, vista blocks and storm water management ponds, as those terms are defined in the Official Plan or any secondary plan adopted under the Official Plan, shall not be considered to be a conveyance of land for park purposes in satisfaction of a requirement under this by-law.

Timing of Conveyance

- 8. Where land is required to be conveyed in accordance with 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; and
 - 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.

Part 3: Payment-in-Lieu of Parkland

9. In lieu of requiring the conveyance of land required by part 2 of this by-law, Lakeshore may require the payment of the value of the lands otherwise required to be conveyed, calculated in accordance with the following:

- a) Where the PIL has been required as a condition of a severance or consent pursuant to sections 51.1 or 53 of the Planning Act, PIL shall be \$6,000 per lot where the land is used for a Residential use.

The per lot rates shall be indexed annually on January 1st of each year commencing January 1, 2023 by the CMHC housing starts by dwelling type index and posted by Lakeshore. Lakeshore's failure to post the indexed rate shall not waive the requirement for compliance with this by-law.

- b) For all other development or redevelopment, the PIL shall be calculated as the equivalent value of the land required as follows:
 - i. in the case of lands proposed for Residential uses:
 - 1) if the density of the development is 25 units per hectare or less, at a rate of five per cent (5%) of the value of land being Developed or Redeveloped, or
 - 2) if the density of the development is greater than 25 units per hectare, at a rate of the value of one (1) hectare of land for each five hundred (500) Dwelling Units proposed
 - ii. in the case of lands proposed for Commercial, Industrial or Institutional uses, the value of two per cent (2%) of the land to be Developed or Redeveloped;
 - iii. in the case of a Mixed-Use Development or Redevelopment, the value of the land in the aggregate, calculated as follows:
 - 1) the Residential component, if any as determined by Lakeshore, of the lands being Developed or Redeveloped, shall require the PIL of the value of land as determined in accordance with paragraph (i) of this subsection; plus
 - 2) 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 paragraph (ii) of this subsection; plus

- 3) the component of the lands proposed for any use other than Residential, Commercial, Industrial or Institutional, if any as determined by the Municipality, shall require the conveyance of land as determined in accordance with paragraph (iii) of this subsection; and
- iv. in the case of lands proposed for Development or Redevelopment for a use other than those referred to in paragraphs (i), (ii) and (iii) of this subsection, the value of five per cent (5%) of the land to be Developed or Redeveloped.
- c) Where the total PIL payable for Development or Redevelopment is less than \$100, the payment shall be deemed to have been paid to Lakeshore.

Timing of PIL Payment and Determination of Value

10. PIL shall be paid as follows:

- a) For Development or Redevelopment where the payment of PIL is required as a condition of an approval or a consent pursuant to either sections 51.1 or 53 of the Planning Act, the PIL shall be paid prior to registration of the plan of subdivision or prior to the consent being given, as the case may be. The value of the land shall be determined as of the day before the day of the approval of the draft plan of subdivision or consent.
- b) For Development or Redevelopment where the payment of PIL is not required as a condition of an approval or a consent, pursuant to either sections 51.1 or 53 of the Planning Act, the PIL shall be paid prior to the issuance of the building permit in respect of the Development or Redevelopment in accordance with section 42 of the Planning Act. The value of the land shall be determined as of the day before the day 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.
- c) In the event that an extension of an approval described in subsection (a) or (b) is requested, the value of the land shall be determined as of the day before the day of the approval of the extension.

Part 4: Other

Previous or Required Conveyances

- 11. Notwithstanding parts 2 and 3 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 PIL 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.

- 12. Where there is a claim of previous conveyance or PIL payment, it is the applicant's/owner's responsibility to provide suitable evidence of such previous conveyance or PIL payment, to Lakeshore's satisfaction.
- 13. Land or PIL required to be conveyed or paid to Lakeshore for park or other public recreation purposes pursuant to parts 2 and 3 of this by-law shall be reduced by the amount of land or PIL 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

- 14. For the purposes of calculating the land conveyance or PIL requirements 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 PIL 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 PIL has been required as a condition of approval, the Net Area of the Lands to be severed pursuant to the consent; and
 - 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 PIL requirements of this by-law.

Phased Development

Where approvals are issued in phases for Development or Redevelopment, Lakeshore shall calculate and require the conveyance of land for park purposes or the payment of CIL, in accordance with parts 2 and 3 of this by-law, on a phase by phase basis.

Part 5: General

15. Where a determination is required to be made by Lakeshore in this by-law, that determination shall be made by the Division Leader – Community Planning. The Division Leader – Community Planning’s decision shall be final.
16. This by-law shall be referred to as the “Parkland Dedication By-law”.
17. By-law 42-2014 and any amendments to the by-law are repealed. Policies made prior the adoption of By-law 42-2014 respecting conveyance of land for park purposes and payment in lieu of conveyance of land for park purposes are rescinded.
18. This by-law comes into force upon passage.

Read and passed in open session on September 13, 2022.

**Mayor
Tom Bain**

**Clerk
Kristen Newman**