

Corporation of the Town of Newmarket

By-law 2022-51

OFFICE CONSOLIDATION

This is a consolidation of the Town's By-law to provide for the conveyance of land and cash-in-lieu thereof for park other purposes in the Town of Newmarket, being By-law 2022-51, as amended by the below listed by-laws and is prepared for reference and information purposes only. The following consolidation is an electronic reproduction made available for information only. It is not an official version of By-law 2022-51. Official versions of all by-laws can be obtained from Legislative Services by calling 905-953-5300. If there are any discrepancies between this consolidation and By-law 2022-51 and listed amending by-laws the official by-laws shall prevail.

2023-06 – January 23, 2023

Amend Subsection 9.1(a)

A By-law to provide for the conveyance of land and cash-in-lieu thereof for park or other purposes.

Whereas Sections 42, 51.1 and 53 of the Planning Act, RSO 1990, c P. 13, as amended, authorizes local municipalities to pass by-laws requiring that land or cash-in-lieu thereof be conveyed to the local municipality as a condition of development or redevelopment of land, the subdivision land, or the granting of provisional consent over land;

And whereas the Council for the Corporation of the Town of Newmarket has adopted policies within its Official Plan pertaining to the conveyance of land or cash-in-lieu thereof to the Town as a condition of development or redevelopment under the Planning Act, as amended;

And whereas Council for the Corporation of the Town of Newmarket deems it necessary and expedient to enact a by-law to provide for the provision of lands for park or other public recreational purposes and the use of alternative requirements therefor;

And whereas Council for the Corporation of the Town of Newmarket desires to repeal and replace By-law 2017-56, as amended to provide for the conveyance of land and cash-in-lieu thereof for park and other purposes;

Now therefore the Council for the Corporation of the Town of Newmarket enacts as follows:

DEFINITIONS:

In this by-law:

- (a) “**Building permit**” means a permit issued pursuant to the Ontario Building Code Act, as amended.
- (b) “**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.

- (c) “**Development**” means:
- i. the construction, erection or placing of one or more buildings or structures on land;
 - ii. the making of an addition or alteration to a building or structure that, in the opinion of Town staff, has the effect of substantially increasing the size or usability thereof;
 - iii. the laying out and establishment of a commercial parking lot;
 - iv. the subdivision of land;
 - v. the granting of provisional consent.
- (d) “**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.
- (e) “**Gross Floor Area**” has the same meaning as in the Town of Newmarket’s Development Charges By-laws 2019-46, 2019-47, 2019-48, as amended or replaced.
- (f) “**Land area**” means a legal land parcel, including the portion of land which is to be conveyed for park purposes, but shall not include: stormwater management areas; lands identified for future road widenings; lands identified for future burying of hydro or related utility facilities; floodplain lands; natural heritage features and hydrologic features identified in the Town Official Plan or Zoning By-Law; natural heritage features and hydrologic features identified by a required Environmental Impact Study; or floodplain lands.
- (g) “**Owner**” means the registered owner of the land to be developed, redeveloped, or subdivided.
- (h) “**Pocket Park**” means a small park that accommodates passive recreation activities and other unstructured activities. **Pocket Parks** are between 70 and 2500 square metres in size, have frontage on at least one public street, and are primarily hard surfaced with limited soft surface elements.
- (i) “**Privately Owned Public Space**” means physical space that is privately owned but appears and functions as public space. These spaces: are secured through an easement in favour of the **Town**; are designed and maintained to the standards established by the **Town**; and remain open and accessible to the public or on a schedule established by agreement with the **Town**.
- (j) “**Redevelopment**” shall have the same meaning as **development**.
- (k) “**Sliver Space**” means physical space that adds to the width of the abutting public sidewalk system. They create plazas or forecourts between the face of the building and the abutting street right-of-way.
- (l) “**Strata Park**” means publicly owned parkland or a publicly accessible privately owned open space located on top of buildings or structures, including but not limited to parking garages. The strata component of this definition refers to the horizontal delineation of ownership, as it is described in the Ontario Condominium Act.
- (m) “**Pedestrian Mews**” means a short, pedestrian-only laneway having a minimum width of 6 metres.
- (n) “**Temporary**” in reference to a building or structure, means a building or structure constructed, erected or placed on land with the explicit understanding that that such building or structure is to be demolished by a set time, as indicated in a legal agreement with the **Town**.
- (o) “**Town**” means the Corporation of the Town of Newmarket.

PART 1 – CONVEYANCE REQUIRED AS A CONDITION OF DEVELOPMENT OR REDEVELOPMENT

- 1.1 As a condition of **development** or **redevelopment** of land, the **Town** shall require the conveyance of land to the **Town** or a **cash-in-lieu** equivalent to the value of the land required to be conveyed under this by-law for park or other public recreational purposes.
- 1.2 Conveyance, including the location and configuration shall be in the form of land, **cash-in-lieu** or a combination of cash and land, at the discretion of the **Town**.

PART 2 – APPLICABILITY

- 2.1 This by-law applies to all lands within the corporate limits of the **Town**.

PART 3 – CALCULATION OF CONVEYANCE

- 3.1 As a condition of **development** or **redevelopment** of land, the **Town** shall require the conveyance of land or **cash-in-lieu** equivalent to the **Town** for parks and other public recreational purposes as follows:

	Outside Urban Centres	Inside Urban Centres
Commercial or Industrial Uses	<ul style="list-style-type: none"> 2% of the land area proposed for development or redevelopment; or cash-in-lieu equivalent. 	<ul style="list-style-type: none"> 2% of the land area proposed for development or redevelopment; or cash-in-lieu equivalent.
Mixed Use	<ul style="list-style-type: none"> The cumulative amount for the various uses proposed at their respective rates specified by this by-law; or cash-in-lieu equivalent. 	<ul style="list-style-type: none"> The cumulative amount for the various uses proposed, at their respective rates specified by this by-law (utilizing either the provided residential ratio or the alternative residential requirement of the Planning Act, whichever is less), up to a maximum of 50% of the land area proposed for development or redevelopment; or cash-in-lieu equivalent.
Residential Uses	<ul style="list-style-type: none"> 1 hectare per 300 dwelling units, or 5% of the land area proposed for development or redevelopment, whichever is greater, or Cash-in-lieu equivalent of 5% of the land area for development or redevelopment or 1 hectare per 500 dwelling units, whichever is greater. 	<ul style="list-style-type: none"> 0.7 hectares per 1000 residents, or the alternative residential requirement of the Planning Act, whichever is less, up to a maximum of 50% of the developable area of any site; or cash-in-lieu equivalent.
All Other Uses	<ul style="list-style-type: none"> 5% of the land area proposed for development or redevelopment; or cash-in-lieu equivalent. 	<ul style="list-style-type: none"> 5% of the land area proposed for development or redevelopment; or cash-in-lieu equivalent.

Additional Parkland Requirement for Residential Applications on Larger Sites within the Urban Centres

- 3.2 Within the areas subject to the Urban Centres Secondary Plan, the **Town** shall require, as part of or in addition to the requirements provided in Part 3.1, that all **development** or **redevelopment** applications that include residential uses on sites greater than 1000 square metres in size, identify a physical land contribution to the Urban Park System, as follows:
- (a) An Urban Park System land contribution of not less than 7.5% of the developable site area; and/or
 - (b) An Urban Square or Plaza, **Pocket Park** or **Sliver Space** with a minimum frontage on a public street of 7.5 metres, and a minimum size of 75 square metres. Larger sites shall include larger Urban Squares or Plazas and/or multiple Urban Park System elements; and/or
 - (c) **Pedestrian Mews** with a minimum width of 6 metres.

The remainder of the required parkland dedication may be made up of an off-site land dedication, or **cash-in-lieu** of land, or some combination of land and **cash-in-lieu**.

For sites less than 1000 square metres in size, the **Town** may accept an on-site land contribution, an off-site land contribution and/or **cash-in-lieu** of land.

PART 4 - PARKLAND CREDIT

- 4.1 Within the areas subject to the Urban Centres Secondary Plan, physical land conveyed and deemed acceptable by the **Town**, including but not limited to Neighbourhood Parks, Urban Squares, Plazas, **Pocket Parks**, **Sliver Spaces** and **Pedestrian Mews** within the Urban Centres, shall receive 100% credit toward the achievement of the parkland dedication requirement of the **Town**, in accordance with the requirements of Part 3 of this by-law.
- 4.2 Within the areas subject to the Urban Centres Secondary Plan, **Privately Owned Public Spaces** and **Strata Parks** that are not in public ownership may be considered as contributing toward the parkland dedication requirement of the **Town**, as long as appropriate legal agreements between the **Owner** and the **Town** are in place to ensure that they are designed and maintained to **Town** standards and are open and accessible to the public.
- 4.3 Where **Privately Owned Public Space** is designed and secured through a public easement for public uses such as interior courtyards, private/public squares and **Pedestrian Mews** linkages designed to be open and accessible to the general public and maintained to **Town** standards, 50% of the value of the land secured through an easement for such uses shall be applied as a credit towards the land requirements or **cash-in-lieu** required for parkland. This credit reflects the fact that these lands are not under the control of the **Town**, which will restrict the ability of the **Town** to design, manage and program the space as it wants over time.
- 4.4 Where **development** or **redevelopment** proposes a **Strata Park** that is to be owned by the **Town**, 80% of the value of the land required for parkland shall be applied as a credit towards the land requirements or **cash-in-lieu** required for parkland. This credit takes into account this type of parkland's inherent use limitations. For clarity, the 80% credit described in this section only applies where **Strata Parks** are not **Privately Owned Public Spaces**.
- 4.5 Where land is dedicated to the **Town** for the purpose of the future burying of hydro and related utility facilities across the frontages of Yonge Street or Davis Drive, 10% of the value of the land being dedicated shall be applied as a credit towards the land or the **cash-in-lieu** required for parkland.

- 4.6 Where **development** or **redevelopment** is within the Historic Downtown Heritage Conservation District or affects a property designated pursuant to Parts IV, V and VI of the Ontario Heritage Act and an identified cultural heritage resource is conserved, 20% of the value of the land required for parkland shall be applied as a credit towards the land requirements or **cash-in-lieu** required for parkland.
- 4.7 Within the areas subject to the Urban Centres Secondary Plan, the **Town** may accept a full or partial off-site land dedication in-lieu of an on-site land dedication, as long as the value of the land for the off-site land dedication is of equal or greater value than that for the on-site land dedication, as determined by Part 4 of this by-law. The off-site dedication may be a complete or partial parkland contribution with reference to the land area and **cash-in-lieu** value being provided.

PART 5 – DETERMINATION OF CASH-IN-LIEU VALUE

- 5.1 To determine a **cash-in-lieu** value of land as required by Part 3 of this by-law, land value shall be determined as of the day before the **building permit** is issued in respect of the **development** or **redevelopment**.
- 5.2 For the purposes of Part 5.1 of this by-law, the value of the land for which payment is being made in lieu of a conveyance shall be established by way of an appraisal of the fair market value of the land by a qualified professional appraiser of real estate with experience appraising all types of real property. The appraisal shall be obtained by the **Owner** and shall be at the sole cost and expense of the **Owner**.
- 5.3 All appraisals obtained pursuant to this by-law shall state the criteria used to determine the value within the appraisal and shall be satisfactory to the **Town**.
- 5.4 An appraisal shall remain current for a maximum period of two years from the date of the appraisal.

PART 6 – TIMING OF LAND CONVEYANCE / CASH-IN-LIEU PAYMENT

- 6.1 Where land is required to be conveyed to the **Town**, and/or **cash-in-lieu** is required to be paid to the **Town** in accordance with Part 3 of this by-law:
- (a) Title for the land to be conveyed or the payment of **cash-in-lieu** thereof for any **development** or **redevelopment** under Section 42 of the Planning Act shall be received by the **Town** prior to the issuance of any building permit for the proposed **development** or **redevelopment**.
- (b) Title for the land to be conveyed or the payment of **cash-in-lieu** thereof shall be received by the **Town** in accordance with the conditions of approval of a plan of subdivision or condominium pursuant to Section 51 of the Planning Act or the conditions of provisional consent pursuant to Section 53 of the Planning Act.

PART 7 – PHASED DEVELOPMENT

- 7.1 Notwithstanding Parts 5 and 6 of this by-law, for **development** or **redevelopment** which occurs pursuant to either of Sections 41 or 51 of the Planning Act and for which approvals are issued in phases, the **Town** shall calculate and require the conveyance of land for park purposes or the payment of **cash-in-lieu** in accordance with the provisions of this by-law, on a phase by phase basis.

PART 8 - EXEMPTIONS

8.1 This by-law shall not apply to the following:

- (a) **Development or redevelopment** of land, buildings or structures owned by and used for the purposes of the **Town**.
- (b) **Development or redevelopment** of land, buildings or structures owned by and used for the purposes of the Regional Municipality of York, including Housing York Inc., or provincial government.
- (c) **Development or redevelopment** of land, buildings or structures owned by and used for the purposes of a Board of Education and/or Newmarket Library Board.
- (d) A college, university or a school defined in the Education Act.
- (e) **Development or redevelopment** of land, buildings or structures owned by and used for the purposes of Southlake Regional Health Centre.
- (f) Not for profit palliative care facilities.
- (g) The replacement of any building that is a direct result of destruction due to accidental fire or other accidental cause beyond the control of the **Owner** provided that no intensification or change in use is proposed, including but not limited to an increase in total **dwelling unit** count or **gross floor area**.
- (h) The enlargement of an existing single detached or semi-detached **dwelling unit** provided the enlargement does not result in an additional **dwelling unit**.
- (i) An accessory **dwelling unit** permitted by the **Town's** Official Plan and/or Zoning By-law in effect.
- (j) The enlargement of an existing commercial, industrial, or institutional building if the **gross floor area** of the enlargement is 10% or less than the current **gross floor area** of the existing building or structure. This exemption shall not apply to enlargements that are 929 square metres or greater in **gross floor area**.
- (k) A **temporary** building or structure.
- (l) Where the total **cash-in-lieu** payable for **development or redevelopment** is less than \$100.

PART 9 – LANDS NOT ACCEPTABLE FOR PARKLAND CONVEYANCE

9.1 The following lands shall not be acceptable for parkland conveyance:

- (a) Lands designated as Natural Heritage System in the **Town's** Official Plan or lands designated Floodplain and Hazard Lands in the **Town's** Urban Centres Secondary Plan. Floodplain lands may only be deemed acceptable for parkland conveyance if written approval for such a use has been received by the **Town** from the Lake Simcoe Region Conservation Authority and the lands are deemed acceptable by the **Town**.
 - i. Notwithstanding subsection 9.1(a), lands designated as Natural Heritage System in the **Town's** Official Plan may be deemed acceptable for parkland conveyance when the following two criteria are met:
 - 1. The lands designated as Natural Heritage System abuts a **Town-owned** park; and

2. The lands designated as Natural Heritage System and the abutting Town-owned park are both identified by the Town for combined public park uses through a Council decision or in a Town approved plan.
 - ii. For the purpose of subparagraph 9.1(a)(i)(2), public park uses shall exclude trails that are identified in the Newmarket Active Transportation Implementation Plan or in the Town's Official Plan.
 - iii. Where lands are conveyed to the Town pursuant to paragraph 9.1(a)(i) for park purposes, a maximum of 50% of the area of the land shall be considered as parkland conveyance in satisfaction of section 42 of the Planning Act.
- (b) Any natural heritage feature or hydrologic feature defined by the Provincial Policy Statement (PPS) as significant, or as identified as significant through an Environmental Impact Study.
- (c) Stormwater management facilities.
- (d) Lands that are deemed to be contaminated.
- (e) Lands used for utility corridors or any other infrastructure, with the exception of lands dedicated to the **Town** for the undergrounding of hydro infrastructure along the Yonge Street and Davis Drive corridors.

PART 10 - DISPUTES

- 10.1 Notwithstanding the provisions of Part 5 of this by-law, and in the event of a dispute between the **Town** and the **Owner** on the value of the land as determined under Part 5 of this by-law where the value of the land is not satisfactory to either party, either party may apply to the Ontario Land Tribunal to have the value of the land determined.
- 10.2 If there is a dispute between the **Town** and the **Owner** on the value of the land as determined under Part 5 of this by-law, the **Owner** may pay the amount required by the **Town** under protest and shall make an application to the Ontario Land Tribunal in accordance with the Planning Act.

PART 11 - GENERAL PROVISIONS

- 11.1 All lands conveyed to the **Town** under this by-law shall be in a condition satisfactory to the **Town** and in accordance with the requirements of the **Town's** Official Plan Policies respecting the acquisition of land, including but not limited to the requirement for a Record of Site Condition pursuant to the Environmental Protection Act.
- 11.2 All lands conveyed to the **Town** under this by-law shall be free and clear of title encumbrances.

PART 12 - ADMINISTRATION

- 12.1 This by-law will be jointly administered by the Director of Planning and Building Services and the Director of Financial Services.
- 12.2 As per the requirements of the Planning Act, the Director of Financial Services shall maintain a record of all lands and **cash-in-lieu** received and including all expenditures from the **cash-in-lieu** parkland reserve fund. The **cash-in-lieu** parkland dedication record and associated financial statements shall be reported to Council and made available to the public on a yearly basis.

PART 13 - EFFECTIVE DATE

- 13.1 This by-law shall come into force on the day it is enacted (the "Effective Date") and By-law 2017-56, as amended, shall be repealed on the Effective Date.

PART 14 - TRANSITION

- 14.1 The provisions of this by-law shall apply to all **development** and **redevelopment** applications pursuant to the Planning Act, as amended, which are submitted and deemed complete on or after the Effective Date of this by-law.

PART 15 - REVIEW OF THE BY-LAW

- 15.1 This by-law shall be reviewed with each Official Plan Review or at an earlier time as prescribed by Council.
The portions of this by-law that are specifically subject to the Urban Centres Secondary Plan shall be reviewed at least every 3 years.
- 15.2 Should any section or part of a section of this by-law be declared or determined by a court or tribunal of competent jurisdiction to be invalid, that portion of this by-law shall be considered to be severed from the balance of this by-law, which will continue to operate in full force and effect.

Enacted this 29th day of August, 2022.

John Taylor, Mayor

Lisa Lyons, Town Clerk