

CORPORATION OF THE TOWNSHIP OF RUSSELL

BY-LAW # 2017-033

**A By-Law Respecting Parkland Conveyance or
Cash-in-Lieu of Parkland Conveyance**

WHEREAS sections 42, 51.1 and 53(13) of the *Planning Act*, as amended , authorize 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 of land, or the granting of provisional consent over land;

WHEREAS the Council of the Corporation of the Township of Russell has adopted policies within its Official Plan pertaining to the conveyance of land or cash-in-lieu thereof to the Township as a condition of development or redevelopment, the subdivision of land, or the granting of provisional consent over land under the *Planning Act*, as amended;

AND WHEREAS Council for the Corporation of the Township of Russell 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 thereof;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF RUSSELL ENACTS AS FOLLOWS:

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1 Title, Scope and Intent

- 1.1 This By-law shall be known and cited as the “Township of Russell Parkland Dedication By-law”.
- 1.2 This By-law shall apply to all lands within the geographic boundary of the Township of Russell.
- 1.3 The intent of this By-law is to enable the Township of Russell to provide land for public parks or other public recreation purpose. The Township is permitted to require the conveyance of parkland or cash-in-lieu of parkland as a condition of Development or Redevelopment, subdivision of land, or the granting of provisional consent as regulated under the *Planning Act*. Land conveyed to the Township under this By-law shall be used for Parkland or other public recreational purposes, subject to the policies of the Official Plan and this By-law.

2 Definitions

- 2.1 For the purposes of interpretation of this By-law, the following definitions shall apply:
 - a) **Affordable Housing:** rental dwelling units where rents are fixed at a maximum of 80% of market rent.
 - b) **Cash-in-Lieu:** 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*.
 - c) **Convey/Conveyed:** to deed or transfer land for park or other public recreational purposes.
 - d) **Development:** the construction, erection or placing on land of one or more buildings or structures, or the making of an addition or alteration to a building or structure which has the effect of substantially increasing the size or usability thereof, or the laying out and establishment of a commercial parking lot.
 - e) **Dwelling Unit:** as defined by the Township of Russell Zoning By-law.
 - f) **Gross Floor Area:**
 - i. For a dwelling or dwelling unit, the total area of the storeys contained within the outside walls of the dwelling or dwelling unit having a clear height to the ceiling of at least 2.2 m, exclusive of any garage, parking garage, carport, porch, veranda, sunroom, unfinished attic, unfinished basement or unfinished cellar;

- ii. For a building or part of a building other than a dwelling or dwelling unit, the total area of all the storeys unit having a clear height to the ceiling of at least 2.2 m contained within the outside walls of the building.
- g) **Gross Land Area:** the land area of the entire development or redevelopment site, including the parcel of land which is to be dedicated for park purposes, including any easements, roadways and stormwater management facilities etc., but not including any lands designated as Environmental Protection Area or similar designation.
- h) **Market Appraisal:** a written opinion of fair market value of one or more parcels of land supported by presentation and analysis of relevant data by a certified accredited appraiser.
- i) **Market Value:** the monetary price a property would be expected to bring in a competitive and open market, as of the specified date, under all conditions requisite to a fair sale, the buyer and seller each acting prudently, knowledgeably and assuming price is not affected by undue stimulus.
- j) **Mixed Use:** the physical integration of residential and commercial, industrial or others uses within a building or structure or separate buildings or structures on the lands proposed for Development or Redevelopment.
- k) **Not-for-Profit Organization:** a corporation registered as a charity and regulated under the *Not-for-Profit Corporations Act, 2010* or regulated by one or more provincial and/or federal act(s).
- l) **Official Plan:** the Official Plan of the Corporation of the Township of Russell in effect at the time.
- m) **Parkland:** developable lands that are suitable for the development of a recreational area, playground, playing fields or similar use and may also include community recreational and leisure facilities, accessory buildings or structures such as a maintenance building, washroom or canteen.
- n) **Planning Act:** the *Planning Act, R.S.O. 1990* as amended or replaced.
- o) **Redevelopment:** 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 use or density of the use in connection therewith.

- p) **Secondary Dwelling Unit:** a self-contained dwelling unit subsidiary to and located in the same building as an associated permitted dwelling unit, where its creation does not result in the creation of a semi-detached dwelling, duplex dwelling, triplex dwelling, or converted dwelling (detached, semi-detached, or duplex dwelling only).
- q) **Subsidized Housing:** rental dwelling units where rent is based on rent-geared-to-income (RGI) and is not more than 30% of a household's income up to a defined minimum.
- r) **Township:** the Corporation of the Township of Russell.
- s) **Township User Fees By-law:** Township of Russell By-law 2016-119 as amended by By-law 2017-034 and such other amendments from time to time.

3 Interpretation

- 3.1 Unless otherwise defined, the words and phrases used in this By-law have their normal and ordinary meaning.
- 3.2 This By-law is gender neutral and, accordingly, any reference to one gender includes the other.
- 3.3 Words in the singular include the plural and words in the plural include the singular.
- 3.4 Headings and the table of contents are inserted for convenience of reference purposes only, form no part of this by-law and shall not affect in any way the meaning or interpretation of the provisions of this by-law.

4 Conveyance of land for park purposes

- 4.1 As a condition of Development or Redevelopment, subdivision of land, or the granting of provisional consent, the Township shall require that land be Conveyed to the Township for park purposes at the rates as defined herein.

Commercial and Industrial uses

- 4.1.1 Where land is developed for commercial or industrial use, at a rate of 2% of the gross land area being developed, redeveloped or subdivided.

Residential uses and all other discrete uses

- 4.1.2 Where land is developed for residential use and where the density is 18 units per hectare or less, at a rate of 5% of the gross land area being developed, redeveloped or subdivided.
- 4.1.3 Where land is developed for residential use and where the density is greater than 18 units per hectare, at a rate of one (1) hectare for each 300 dwelling units proposed.

Mixed Uses

- 4.1.4 When land is developed for Mixed Uses, the land to be Conveyed shall be as follows:
 - a) For Mixed Uses on a site, the land to be Conveyed shall be the sum of the requirements proportionate to the site area allocated to each use at the rates set out in sections 4.1.1, 4.1.2 and 4.1.3.
 - b) For Mixed Uses within a building, the land to be conveyed shall be the sum of the requirements proportionate to the gross floor area allocated to each use at the rates set out in sections 4.1.1, 4.1.2 and 4.1.3.

Single lot created by consent

- 4.1.5 Where land is severed for commercial or industrial use, at a rate of 2 of the gross land area being severed.
- 4.1.6 Where land is severed for residential use, at a rate of 5% of the gross land area being severed.

5 Reductions in Parkland Conveyance

- 5.1 The Township may reduce total Parkland Conveyance requirements by a maximum of one fifth for the Conveyance of:
 - a) Land identified on Official Plan Schedule B: Transportation as potential trail or proposed trail prolongation;
 - b) Land connected to the existing trail system;
 - c) Land which contributes to the expansion of the Township's trail system;
 - d) Land along the Castor River, East Castor River, or the waterways identified in Schedule A, or

e) Land adjacent to existing conservation areas.

5.2 Parkland requirements for Conveyance shall be reduced for Developments and Redevelopments by Not-for-Profit Organizations for Subsidized and Affordable Housing. The reduction in Parkland required for Conveyance or the equivalent Cash-in-Lieu will be proportionate to the percentage of Affordable and/or Subsidized Dwelling Units.

6 Land Suitable for Parkland Conveyance

6.1 The Township may accept land for passive and active Parkland and other public recreational purposes. These lands conveyed to the Township shall be in a location and physical condition satisfactory to the Township. Any land parcel configuration, size or location that is constrained or deemed undesirable, as determined by the Township, shall not be acceptable as Parkland Conveyance. Factors that will be considered in determining suitability for conveyance include, but are not limited to the following:

- a) Open frontage on a public road which provides visibility and accessibility;
- b) Adequate size and configuration to accommodate park amenities such as sports fields, playgrounds, and programmable open space as required;
- c) Physical state, including lot grading and drainage, to accommodate park amenities such as sports fields, playgrounds, and programmable open space as required;
- d) Abutting complementary land uses;
- e) Consistent with the Official Plan policies for the area and for parks and leisure areas;
- f) Connectivity to the existing trail system, where possible;
- g) Pedestrian and cyclist access, including direct access to existing or planned Parkland;
- h) Opportunities to co-locate with schools;
- i) Public access to the Castor River, East Castor River or the waterways identified in Schedule A;
- j) Equitable distribution within the community; and

- k) Connectivity to existing and planned parks and open spaces.

7 Lands Not Suitable for Parkland Conveyance

7.1 The Township shall not accept lands to fulfill Parkland Conveyance requirements which are:

- a) Hazardous or flood prone areas; except lands identified in schedule A
- b) Steep or unstable slopes; except lands identified in schedule A
- c) Any land having unsuitable or unstable soil conditions for intended recreation facilities; except lands identified in schedule A
- d) Utility right-of-ways or easements;
- e) Any land containing an easement, encumbrance or right-of-use that limits or restricts the Township's use of the land;
- f) Stormwater management facilities;
- g) Provincial or locally significant wetlands or woodlands;
- h) Required setbacks and buffer lands from natural features such as wetlands and watercourses, except land identified in Schedule A;
- i) Roadways or walkways being conveyed for non-parkland purposes;
- j) Lands that are deemed to be contaminated; and
- k) Lands that the Township determines to be unsuitable as Parkland.

7.2 Lands not suitable for Parkland Conveyance as per section 7.1 a, b c, and h may be accepted for Conveyance where land is identified in schedule A, provided land suitable for Parkland Conveyance as identified in section 6 is provided as part of the lands Conveyed and subject to Township approval.

8 Cash-in-Lieu of Parkland Conveyance

8.1 The Township may, in the following circumstances require the payment of money in-lieu of accepting a Conveyance of land:

- a) Where there is no land that is either usable or functional on the site for Parkland or recreational purposes;
- b) Where the Conveyance of Parkland from the site would reduce the number of dwelling units or the floor space of the Development or Redevelopment to the extent that the Development or Redevelopment is unfeasible;
- c) Where the development or redevelopment is located within the 417 Industrial Park;
- d) Where the Township has identified land in a more appropriate or accessible location and that has been or is to be acquired by the Township;
- e) Where the area being developed or redeveloped is already well served with parkland; or
- f) For a rural severance.

8.2 The decision whether or not to require a conveyance of land, payment of Cash-in-Lieu of accepting a conveyance or combination therein will be made by the Director of Planning, Building and Economic Development and the Director of Parks and Recreation at the time of granting a planning approval.

8.3 Where Cash-in-Lieu of Parkland is required, the Township shall require that the payment be in the amount of the value of the land otherwise to be conveyed as per section 4 of this By-law.

8.4 Notwithstanding section 8.3, where the conveyance of Parkland for residential uses is required at a rate of 1 hectare per 300 Dwelling Units, the Cash-in-Lieu payment shall be calculated based on the value of land required to be conveyed at a rate of 1 hectare per 500 Dwelling Units.

8.5 All money received by the Township through payments of Cash-in-Lieu of Parkland shall be deposited into the Cash-in-Lieu – Parkland account.

9 Valuation of Land

9.1 For Cash-in-Lieu of Parkland, the value of the land otherwise required to be conveyed, shall be determined as of:

- a) The day before site plan approval or the issuance of the building permit for development or redevelopment;

- b) The day before provisional consent is given for a consent application;
- c) The day before the approval of the draft plan of subdivision; or
- d) The land sale record date accepted by the Township as per Section 9.2 b).

9.2 Where Cash-in-Lieu of Parkland is required, the value of the land shall be determined by:

- a) A market appraisal or a letter of opinion, obtained by and at the owner's expense, from a certified appraiser reviewed and accepted by the Director of the Planning Department; or
- b) The most recent land sale record of the subject property, no more than 24 months prior to the date of the agreement, reviewed and accepted by the Director of the Planning Department; provided the sale was at market value and there has been no change that may impact the land value, including but not limited to changes in the zoning, Official Plan designation, or severance.

10 Credits for Previous Conveyances

10.1 Notwithstanding Sections 4 and 8 of this By-law, where it is known or can be demonstrated that land has been conveyed or is required to be conveyed to the Township for park or other public recreational purposes or Cash-in-Lieu has been received by the Township or is owing to it pursuant to a condition imposed previously in accordance with the *Planning Act*, no additional conveyance or payment will 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 residential density of the 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.

10.2 Land or Cash-in-Lieu required to be conveyed or paid to the Township for park or other public recreation purposes pursuant to Sections 4 or 8 of this By-law shall be reduced by the amount of land or Cash-in-Lieu previously received by the Township in accordance with the *Planning Act* in respect of the land being Developed or Redeveloped.

11 Exemptions

11.1 This By-law shall not apply to Development or Redevelopment of any of the following:

- a) A building that was accidentally damaged or demolished, and where
 - i. The building is repaired or replaced and re-occupied before the expiry of two years from the date of damage or demolition;
 - ii. The building continues to be used for the same purpose after it is repaired or rebuilt; and
 - iii. There is no increase in the number of Dwelling Units or gross floor area;
- b) An addition or alteration to an existing residential dwelling that does not result in an increase in Dwelling Units;
- c) A place of worship;
- d) A cemetery;
- e) A municipal or other government use;
- f) A secondary dwelling unit, as permitted by the Township Zoning By-law;
- g) A home based business, as permitted by the Township Zoning By-law;
- h) An addition or alteration to an existing non-residential use building or site that does not require site plan control approval as per the *Planning Act* or the Site Plan Control By-law; or
- i) A temporary use for which approval has been granted under section 39 of the *Planning Act*.

12 Timing of Parkland Conveyance or of Cash-in-Lieu Payment

12.1 Where land is required to be conveyed to the Township in accordance with Section 4 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 or 53 of the *Planning Act*, the Township may require the Conveyance of land as a condition of approval, and said lands shall be Conveyed to the Township either prior to or immediately upon registration of the plan or the consent being given, as determined by the Township;
- 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*, the Township shall require the conveyance of land as a condition of Development or Redevelopment prior to building permit issuance, in accordance with section 41 of the *Planning Act*.

12.2 Where Cash-in-Lieu of Parkland is required to be paid to the Township in accordance with sections 8 and 9 of this By-law, the payment shall be made as follows:

- a) For Development or Redevelopment where the Township has required the payment of Cash-in-Lieu of Parkland as a condition of an approval or consent, pursuant to sections 51.1 or 53 of the *Planning Act*, the Cash-in-Lieu payment shall be paid prior to plan registration or the consent being given;
- b) For Development or Redevelopment approved pursuant to section 41 of the *Planning Act*, where Cash-in-Lieu has not been required pursuant to sections 51.1 or 53 of the *Planning Act*, the Cash-in-Lieu payment shall be paid prior to issuance of the first building permit in respect of the Development or Redevelopment as per section 42 (6.1) of the *Planning Act*.

13 Disputes

13.1 In the event of a dispute between the Township and the owner on the value of land as determined under section 9 of this By-law either party may apply to the Ontario Municipal Board to have the value of the land determined.

13.2 If there is a dispute between the Township and the owner on the value of land as determined under section 9 of this by-law, the owner may pay the amount required under protest and shall make an application to the Ontario Municipal Board in accordance with the *Planning Act*.

14 Use of Cash-in-Lieu of Parkland Funds

- 14.1 All money received by the Township as a requirement under section 8, and all money received on the sale of any land required to be conveyed under section 4, less any amount spent by the Township out of its general funds in respect of the land, shall be paid into a special account referred to as the Cash-in-lieu – Parkland account, and spent only for the acquisition of land to be used for park or other public recreational purposes, including the erection, improvement or repair of buildings and the acquisition of machinery for park or other public recreational purposes.
- 14.2 The money in the special account may be invested in securities in which the Township is permitted to invest under the *Municipal Act, 2001*, and the earnings derived from the investment of the money shall be paid into the Cash-in-lieu – Parkland account, and the auditor in the auditor’s annual report shall report on the activities and status of the account.
- 14.3 The treasurer of the Township shall each year, on or before April 30th, provide Council with a financial statement relating to the Cash-in-lieu – Parkland account.
- 14.4 Council shall ensure that the statement is made available to the public.
- 14.5 The treasurer shall give a copy of the statement to the Minister of Municipal Affairs and Housing on request.
- 14.6 The statement required under section 14.3 shall include, for the preceding year:
- (a) statements of the opening and closing balances of the special account and of the transactions relating to the account;
 - (b) statements identifying,
 - (i) any land or machinery acquired during the year with funds from the special account;
 - (ii) any building erected, improved or repaired during the year with funds from the special account;
 - (iii) details of the amounts spent; and
 - (iv) for each asset mentioned in subclauses (i) and (ii), the manner in which any capital cost not funded from the special account was or will be funded; and
 - (c) any other information that is prescribed.

15 Administration

- 15.1 If a court of competent jurisdiction declares any provision, or any part of a provision, of this By-law to be invalid, or to be of no force and effect, it is the intention of Council in enacting this By-law that each and every provision of this By-law be applied and enforced in accordance with its terms to the extent possible according to law.
- 15.2 This By-law shall be administered by the Director of Planning or Designate.
- 15.3 Council may, by resolution, vary any of the requirements for Parkland dedication or payment in lieu thereof set out in this By-law.
- 15.4 No building permit shall be issued until all Parkland dedication requirements have been satisfied as established in this By-law.
- 15.5 Any legal or administrative costs associated with the Conveyance of land shall be the responsibility of the transferor.

16 Repeal

- 16.1 By-law #65-98 being a by-law to establish a procedure for requiring conveyance of land to the municipality for park purposes or requiring payment of money in lieu of, previously approved October 5th, 1998 as well as all of its amendments are repealed as of the day on which this By-law comes into force and effect.

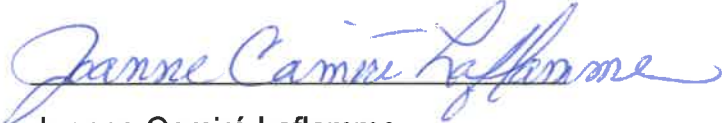
17 Enactment

- 17.1 That this By-law and Schedule "A", attached to and forming part of this By-law, shall come into force and effect upon final reading thereof.

READ A FIRST TIME THE 1ST OF MAY 2017
 READ A SECOND TIME THIS 5TH OF JUNE 2017
 READ A THIRD TIME AND FINALLY PASSED THIS 14TH OF AUGUST 2017



Pierre Leroux
 Mayor



Joanne Camiré Laflamme
 Clerk

Schedule A

 **Waterways**



Figure 1: Embrun – waterways along which parkland conveyance may be reduced as per section 5.1 d)

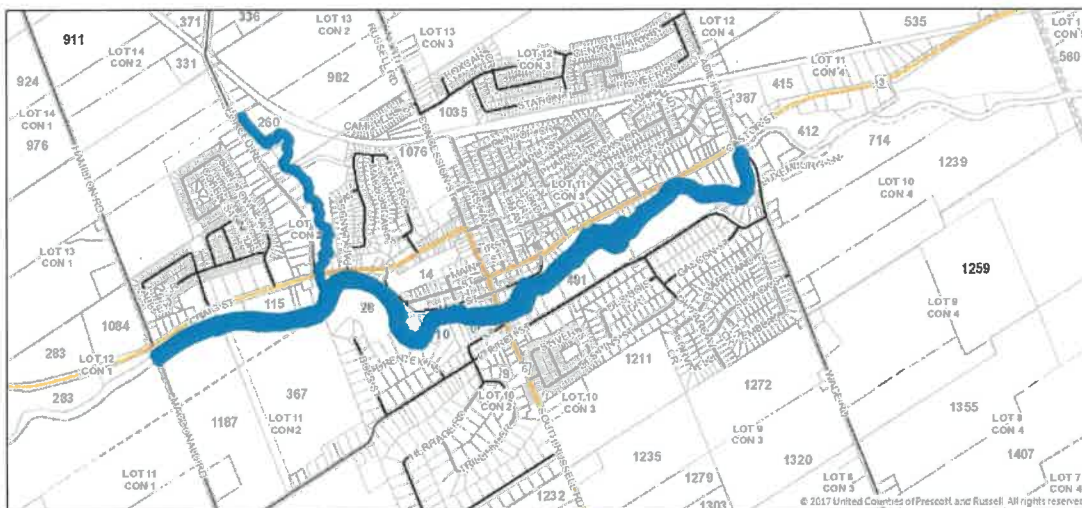


Figure 2: Russell – waterways along which parkland conveyance may be reduced as per section 5.1 d)

Certificate of Authentication

This constitutes Schedule "A" to Zoning By-Law No. 2017-033,
passed this 14th day of August 2017.

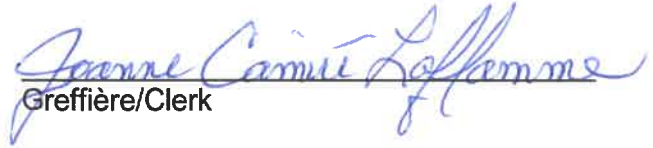
Township of Russell

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Maire/ Mayor



Greffière/Clerk