

Authority: Item 9, Economic Development
and Planning Committee
Report 09-008 (PED09028(a))
CM: April 15, 2009

Bill No. 124

CITY OF HAMILTON

BY-LAW NO. 09-124

**Being a By-law to require the conveyance of land for
park or other public recreational purposes as a
condition of development or redevelopment or the
subdivision of land.**

WHEREAS sections 42, 51.1, and 53 of the *Planning Act* provide that the Council of a local municipality may by By-law require that land be conveyed to the municipality for park or other public recreational purposes as a condition of development or redevelopment or the subdivision of lands;

AND WHEREAS sections 42 and 51.1 of the *Planning Act* provide for an alternate parkland rate of one hectare for each three hundred (300) dwelling units proposed for development provided the municipality has an official plan that contains specific policies dealing with the provision of lands for park or other public recreational purpose at such rate;

AND WHEREAS the Council of the City of Hamilton wishes to use these provisions to further the acquisition of lands for parks or other public recreational purposes;

NOW THEREFORE the Council of the City of Hamilton hereby ENACTS as follows:

DEFINITIONS

1. In this By-law:

“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, or the laying out and establishing of a commercial parking lot.

“Redevelopment” means the removal of a building or structure from land and the further development of the land, the substantial renovation of a building or

structure, and a change in the use, character or the density of the use in connection therewith.

“Agricultural Use” means the bona fide use of lands and buildings for apiaries, fish farming, dairy farming, fur farming, the raising or exhibiting of livestock, or the cultivation of trees, shrubs, flowers, grains, sod, fruits, vegetables and any other crops or ornamental plants and includes the operation of a farming business and the erection of a farm help house on agricultural land, but excludes the following: a commercial greenhouse, the development of a single detached dwelling on the agricultural land (the primary residence), a permanent building that is actively used to sell, direct to the public, any items that are not produced from the farm, and restaurants, cafes, wine bars or any public eating establishments.

“Industrial Use” means the use of land, buildings or structures for, or in connection with:

- i. manufacturing, processing, producing, storing or distributing of something;
- ii. research or development in connection with manufacturing, producing or processing something;
- iii. retail sales by a manufacturer, producer or processor of something they manufactured, produced or processed, if the retail sales are at the site which the manufacturing, production or processing takes place;
- iv. offices for administrative purposes, if they are;
 - a. carried out with respect to manufacturing, producing, processing, storage or distributing of something, and,
 - b. in or attached to the building or structure used for that manufacturing, producing or processing, storage or distribution.

“Subdivision” means the process referred to in Section 51 of the *Planning Act*.

“Consent” means the process referred to in Section 53 of the *Planning Act*.

“Gross land area” means the total area of all lands contained in the subdivision plan or development or redevelopment application including lands subject to easements.

“Net land area” means the “Gross land area” minus any storm water management facilities to be conveyed to the City, major utility corridors and easements and any “Environmental lands”. Notwithstanding the above, where water services, wastewater services, public roads, private roads and/or parking lots are located within the major utility corridor/easement or the “Environmental lands”, the respective portion of the lands where the said improvements are located shall be included as part of the Net land area.

“Environmental lands” includes valley land, being lands located below the “top of bank” as defined by the appropriate Conservation Authority, but shall not include any buffer land above the top of bank; Provincially significant lands including Areas of Natural or Scientific Interest (ANSI); Wetlands; Environmentally Significant Areas (ESA); and Woodlots.

“Residential” refers to dwelling units at various densities.

“Dwelling Unit” shall mean a room or suite of rooms used or intended to be used by one or more persons living together as one household, in which cooking and sanitary facilities are provided for the exclusive use of the household, and to which an independent entrance is provided from outside the building or from a common hallway, vestibule or stairway.

“Street Townhouse Dwelling” is the same definition as in Zoning By-law 05-200.

“Planning Act” means the Planning Act, R.S.O. 1990, c. P.13, as amended to date and as may be amended or replaced henceforth from time to time.

APPLICATION

2. This By-law shall apply to all lands within the City of Hamilton;

DEVELOPMENT OR REDEVELOPMENT

3. As a condition of development or redevelopment pursuant to Section 42 of the Planning Act, R.S.O. 1990, as amended, the owner is required to convey to the City land for park or other public recreational purposes as follows:

(1) Development

- a. In the case of lands to be developed for an individual single family residence in a rural area, the parkland dedication shall be based on the

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amount of two and one half percent (2.5%) of a 0.405 hectare (1 acre) building lot (this section is not applicable to development within designated Rural Settlement Areas).

- b. In the case of lands proposed to be developed or redeveloped for residential purposes:
 - i. at a density less than 20 units per hectare, dedication of land in the amount of five percent (5%) of the Net land area to be developed or redeveloped;
 - ii. at a density of 20 units per hectare to 75 units per hectare, dedication of land at a rate of 1.0 hectare of the Net land area for each 300 dwelling units proposed, except for street townhouse dwellings which shall be at a land dedication rate of 0.6 hectare of the Net land area for each 300 dwelling units proposed;
 - iii. at a density of 75 units per hectare to 120 units per hectare, dedication of land at a rate of 0.6 hectare of the Net land area for each 300 dwelling units proposed;
 - iv. at a density greater than 120 units per hectare, dedication of land at a rate of 0.5 hectare of the Net land area for each 300 dwelling units proposed;
 - v. notwithstanding Clause ii., a maximum land dedication of five percent (5%) of the Net land area will apply to developments of single and semi-detached lots, duplexes and a maximum of two (2) apartment dwellings above a commercial use.
- c. In the case of lands proposed for development or redevelopment for commercial purposes, including a golf course or driving range, land in the amount of two percent (2%) of the Net land area to be developed or redeveloped.
- d. In the case of lands proposed for development or redevelopment for a use other than commercial and residential, and land uses specifically exempted (Section 11); land in the amount of 5% of the Net land area to be developed or redeveloped.
- e. In the case of lands proposed for development for mixed commercial and residential uses, land based on the pro rata proportion of the proposed commercial floor area to the total floor area of the building, times the Net land area of the property times 2%, plus the pro rata proportion of the

proposed residential floor area to the total floor area of the building, times the Net land area times 5% (if subsections 3.(1)b.i. or 3.(1)b.v. apply, or plus the Net land area to be dedicated calculated using the density formula (if subsections 3(1)b.ii. to iv. apply).

Expansion of Existing Buildings/Uses

- f. In the case of lands proposed for residential expansion, the land dedication calculation shall be based on the additional dwelling units proposed, which shall be the land area to be dedicated calculated under Section 3.(1)b. for the entire development, multiplied by the pro rata proportion of the number of proposed additional dwelling units to the total number of units after development.
- g. In the case of lands proposed for commercial expansion, where no parkland has been previously dedicated, the land dedication calculation shall be based on 2% of the Net land area multiplied by the pro rata proportion of the floor area of the new building addition to the total floor area after development. If parkland was dedicated previously on the same site, no further dedication is required.
- h. For the purposes of this By-law, a building addition need not physically adjoin an existing building. A building addition includes the construction of additional free standing buildings on the same property (i.e. separate retail or restaurant pads on a shopping centre property or a new townhouse block).

(2) Redevelopment

Conversion or Change of Density of an Existing Use and Demolition/New Construction

- a. Further to the building additions described above, redevelopment may involve a conversion of existing space to another use, a change of density of an existing use/space, or the demolition of existing space and construction of new replacement floor space. The same principles apply as noted above with regard to pro rating new or converted space or dwelling units to the total floor space or number of dwelling units after construction.

Offsetting

- b. i. In instances where parkland was not previously dedicated or cash-in-lieu paid and floor space and/or residential units have been eliminated through conversion or demolition, the park dedication for the newly created space and/or units is offset against the park dedication that is deemed to apply to the existing floor space and/or residential units, respectively, that is/are being eliminated for the same use.

For example:

1. parkland dedication attributed to existing commercial floor space that is being converted to a new commercial use (i.e. retail to office) will offset the parkland dedication for the new redevelopment for the same floor area;
 2. an existing single detached residence is being converted to a triplex. The parkland dedication attributable to the existing dwelling offsets the parkland dedication for one of the three new dwelling units;
 3. parkland dedication attributed to existing commercial floor space that is being converted to residential space does not offset the parkland dedication required for the new residential units, and vice versa.
- ii. In contrast to Subsection b.i. above, where parkland has previously been dedicated or cash-in-lieu paid for existing development, then the parkland dedication attributable to the existing space being eliminated through conversion or demolition is offset against the parkland dedication required for the new floor space or dwelling units, regardless of use, subject to Section 10.

For example, if residential space in the urban area was to be converted to commercial use, regardless of building size, no land needs to be dedicated as the residential rate of 5% or more offsets the commercial rate of 2%. However, there would be no credit given to the owner/developer for the remaining 3% or more. In the reverse situation, there would be a 2% offset and the developer would be required to dedicate 3% or more land.

- iii. The offset for demolished buildings only applies if a building permit is issued for the new development or redevelopment within five (5) years from the date the demolition permit was issued.

SUBDIVISION or CONSENT

4. As a condition of subdivision plan approval pursuant to Section 51 or the giving of a provisional Consent pursuant to Section 53 of the Planning Act, R.S.O. 1990, the owner is required to convey to the City land for park or other public recreational purposes as follows:

(1) Development

- a. In the case of lands to be developed for residential purposes:
- i. at a density less than 20 units per hectare, dedication of land in the amount of five percent (5%) of the Net land area to be developed or redeveloped;
 - ii. at a density of 20 units per hectare to 75 units per hectare, dedication of land at a rate of 1.0 hectare of the Net land area for each 300 dwelling units proposed, except for street townhouse dwellings which shall be at a land dedication rate of 0.6 hectare of the Net land area for each 300 dwelling units proposed;
 - iii. at a density of 75 units per hectare to 120 units per hectare, dedication of land at a rate of 0.6 hectare of the Net land area for each 300 dwelling units proposed;
 - iv. at a density greater than 120 units per hectare, dedication of land at a rate of 0.5 hectare of the Net land area for each 300 dwelling units proposed;
 - v. notwithstanding Clause ii., a maximum land dedication of five percent (5%) of the Net land area will apply to developments of single and semi-detached lots, duplexes and a maximum of two (2) apartment dwellings above a commercial use.
- b. In the case of a subdivision plan proposed for commercial purposes, land shall be dedicated in the amount of two percent (2%) of the Net land area contained within the subdivision; and,
- c. In the case of a subdivision containing lands proposed for a use other than commercial and residential, and land uses specifically exempted (Section 11), land in the amount of 5% of the Net land area to be developed.

- d. In the case of a subdivision containing lands proposed for development of different uses and/or at different residential densities, a combination of the dedication rates defined in Paragraphs 4(1)a., b. and c., applicable to the specific use and/or density.

DOWNTOWN CORE

5. Notwithstanding Sections 3.(1)b., 3.(1)e., 3.(1)f. and 4.(1)a., for new residential development or redevelopment located within the Hamilton Downtown Community Improvement Project Area as shown on Schedule A, land shall be dedicated at a rate of five percent (5%) of the Net land area regardless of density.

BROWNFIELD SITES

6. Notwithstanding Sections 3.(1)b., 3.(1)e., 3.(1)f. and 4.(1)a., for new residential development or redevelopment that qualify for financial incentives under ERASE Community Improvement Plan programs, located within Areas 2 and 3 as shown on Schedule B, land shall be dedicated at a rate of five percent (5%) of the Net land area regardless of density.

LOCATION OF PARK LAND

7. (1) The location and configuration of land required to be conveyed shall be at the sole discretion of the City and all such conveyances shall be free and clear of all encumbrances.
- (2) Any conveyance or dedication of Environmental Lands as defined herein, environmental buffer lands, walkways and trails, major utility corridors and easements, floodplain or storm water management facilities shall not be considered a conveyance for park or other recreational purpose pursuant to the requirements of Sections 3, 4, 5 or 6 above.

CASH-IN-LIEU OF PARKLAND

8. (1) In lieu of requiring the conveyance referred to in Sections 3, 4, 5 and 6 above, the City may require the payment of money to the value of the lands required to be conveyed.

- (2) "Development" and "Redevelopment" terms apply to: 1) the entire Net land area of the phase being registered for development proposed within an approved plan of subdivision; and, 2) to the entire Net land area of a Site Plan application for development proposed as part of an approved Site Plan, notwithstanding that building permits for development within the subdivision phase or site plan area may be issued in stages.

VALUATION

9. (1) Where the City requires the payment of money to the value of the land otherwise required to be conveyed, such payments shall be made as a condition of development or redevelopment pursuant to Section 42 of the Planning Act, prior to the issuance of the building permit for the land to be developed or redeveloped.
- (2) The value of the land shall be determined as of the day before the day of the issuance of the building permit in respect of the development or redevelopment, or, where more than one building permit is required for the development, as of the day before the day of the issuance of the first building permit.

PREVIOUS LAND DEDICATION OR PAYMENT IN LIEU

10. Land or cash-in-lieu equivalent required to be conveyed to the City for park or other public purposes pursuant to Sections 3, 4, 5, 6 and 8 shall be determined having regard to the amount of land conveyed or cash-in-lieu of parkland equivalent previously paid to the City pursuant to Sections 42, 51.1 or 53 of the Planning Act and no additional conveyance or payment in respect of the land subject to the earlier conveyance or payment will be required by the City in respect of subsequent development or redevelopment unless:
 - (1) There is a change in the proposed development or redevelopment which would increase the density of development; *or*,
 - (2) Land originally proposed for development or redevelopment for Commercial or Industrial purposes or uses exempted from parkland dedication under Section 11, is now proposed for development or redevelopment for other purposes.

EXEMPTIONS

- 11. Notwithstanding any other provisions of this By-law, this By-law shall not apply where:**
- (1) The proposed development or redevelopment is for Industrial or Agricultural purposes as defined in this By-law.**
 - (2) The development or redevelopment consists of making an addition or alteration to a residential building provided the number of dwelling units within the residential building is not increased.**
 - (3) The development or redevelopment consists of making an addition or alteration to a commercial building and the building continues to be used for that purpose, as follows:**
 - a. If the building was constructed on or prior to July 9, 2003, a net increase of floor area up to a maximum of 50% of the gross floor area existing as of July 9, 2003 is exempt, whether constructed at one time or by cumulative expansions;**
 - b. If the existing building is a mixed use building (i.e. commercial and residential), an expansion of the commercial portion is exempt if it is no more than 50% of the existing commercial floor area as of July 9, 2003, whether constructed at one time or by cumulative expansions;**
 - c. Where the expansion of the commercial floor area exceeds 50% of the existing floor area as of July 9, 2003, parkland dedication is based on the entire floor area of the addition pro-rated to the total floor area after construction.**
 - (4) Development or redevelopment on a school property is in the form of portable classrooms.**
 - (5) Development or redevelopment on existing golf courses is for continued golf course use.**
 - (6) The proposed development or redevelopment is for the following Institutional uses:**
 - a place of worship, college or university, public hospital, hospice, a non-profit emergency shelter, public library, cemetery, mausoleum, columbarium or crematorium, or other charitable, non-profit uses as may be deemed by Council.**

- (7) Development or redevelopment is for eligible affordable housing projects as confirmed by the City of Hamilton Housing Division, Community Services Department. Eligibility will be determined based on final confirmation by the Housing Division of funding approval from a Housing Program administered by the City.

EXCEPTION

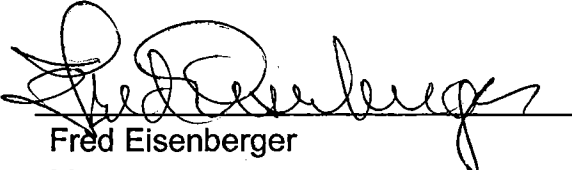
12. Council may, by resolution, vary any of the requirements for parkland dedication or payment in lieu thereof set out in this by law provided that such variance is
 - (1) less onerous or stringent than the requirement set out herein;
 - (2) applicable for a temporary, specified period of time;
 - (3) applicable to a specified type or class of development or redevelopment; and,
 - (4) applicable to the whole of the City or a specified geographical area thereof.

The period of time specified pursuant to (ii) above may be extended once by resolution of Council for an additional period of time not to exceed the period of time specified for the original variance.

BY-LAWS REPEALED

13. The following By-laws are hereby repealed:
 - (1) By-law 03-199;
 - (2) By-law 04-055;
 - (3) By-law 05-095.

PASSED and **ENACTED** this 10th day of June, 2009

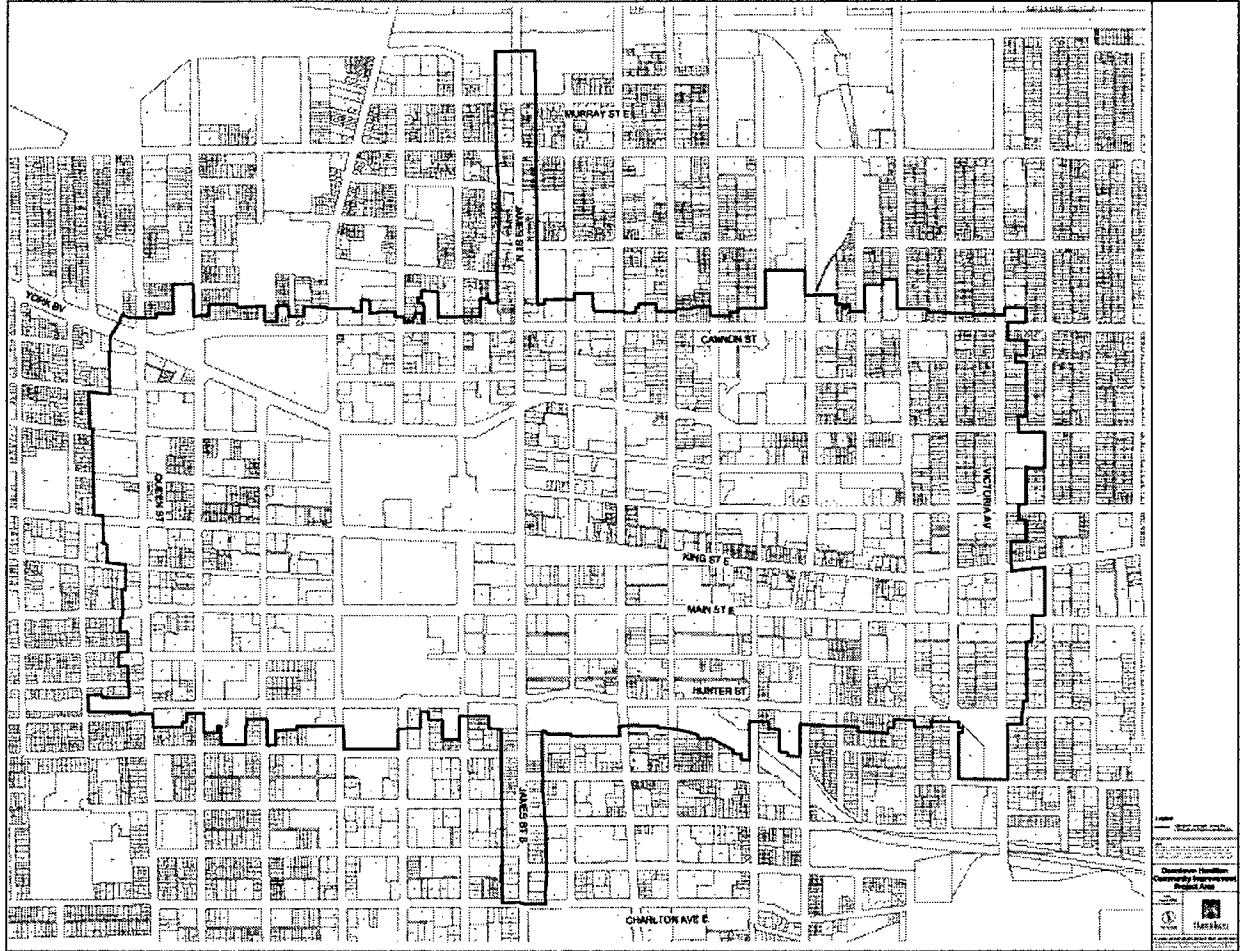

Fred Eisenberger
Mayor


Kevin C. Christenson
City Clerk

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SCHEDULE "A"

Downtown CIP Area



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SCHEDULE "B"

ERASE CIP Areas 2 and 3

