



CITY OF KINGSTON
REPORT TO COUNCIL

Report No.: 12-120

TO: Mayor and Members of Council
FROM: Lanie Hurdle, Commissioner, Community Services
RESOURCE STAFF: Wally Ferris, Director, Recreation & Leisure Services
DATE OF MEETING: April 3, 2012
SUBJECT: 172 Ontario Street – Parkland Dedication Cash-in-Lieu Reduction

EXECUTIVE SUMMARY:

BPE Development requests that the City fully reduce the requirement for cash-in-lieu of parkland for the development of three residential units proposed at 172 Ontario Street. The applicant is concerned the overall renovation cost to restore the property is significant and unique to its heritage designation.

The development is preserving and utilizing a prominent heritage site by repurposing part of its vacant commercial space. It is located within a desired intensification area and in close proximity to many existing parks. The redevelopment and intensification of the existing building demonstrates sustainable land use and is an appropriate use of a valuable heritage resource. A reduction of the cash-in-lieu of parkland requirement for this scale of application is not expected to pose a significant burden to the current parkland service level in the area.

Due to the many beneficial aspects of re-use and improvements to this prominent heritage building and given the modest expected increased burden of use on the area's existing parkland, BPE Development's request to fully reduce cash-in-lieu of parkland is appropriate.

RECOMMENDATION:

THAT Council approve BPE Development's request to fully reduce a parkland dedication cash-in-lieu requirement for the three residential dwelling unit conversion development in the designated property at 172 Ontario Street.

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AUTHORIZING SIGNATURES:

<p><u>ORIGINAL SIGNED BY COMMISSIONER</u> Lanie Hurdle, Commissioner, Community Services</p>
<p><u>ORIGINAL SIGNED BY CHIEF ADMINISTRATIVE OFFICER</u> Gerard Hunt, Chief Administrative Officer</p>

CONSULTATION WITH THE FOLLOWING COMMISSIONERS:

Cynthia Beach, <i>Sustainability & Growth</i>	√
Denis Leger, <i>Transportation, Properties & Emergency Services</i>	N/R
Jim Keech, <i>President and CEO, Utilities Kingston</i>	N/R

(N/R indicates consultation not required)

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OPTIONS/DISCUSSION:

On March 16, 2012 BPE Development submitted a letter to staff requesting full relief from the required parkland dedication cash-in-lieu payment on the proposed development at 172 Ontario Street. The applicant is concerned that costs to develop this unique designated heritage site are significant and include additional expenses that are a burden for a project of this scale and nature, such as a heritage impact statement, archaeological report, site plan control and the obligation to preserve and restore the heritage building to correct standards with specific materials.

Background

BPE Development is currently in the site plan control process to permit a conversion of the top two vacant, currently commercially used, floors in a heritage building to three residential apartment units. The top two vacant floors were occupied by residential use more than 50 years prior. The proposed development is recommended to have specific materials and finishes appropriate to maintain the heritage value of the building. The resulting overall cost of development is significant and the applicant is concerned that it is a burden on a project of this scale and nature. Prior to submitting for site plan control, 172 Ontario Street underwent review by the Heritage Committee and received approval for renovations under the Ontario Heritage Act on December 5, 2011.

As part of the site plan and subdivision control process, parkland dedication is required when new residential units are created. Parkland dedication requirement for development is provincially permitted and set out in the *Planning Act*. Parkland dedication from land development contributes toward ensuring sufficient public land for park and recreational use for future City residents. Parkland dedication is either conveyed as a parcel of land or in situations where conveyance is not practical or not desired, payment-in-lieu of the required dedication is required. Cash-in-lieu of parkland must be used toward land acquisition for the purpose of park or other recreational purpose.

172 Ontario Street is regulated by *By-Law 8820, Parkland Dedication By-Law* for the former City of Kingston area. Under the current by-law, the proposed development would be subject to a high density dedication rate of 10 m² per unit, for a total of 30 m² of parkland dedication. The existing commercial use of the proposed residential portion of this site would generate a parkland credit. The resulting parkland dedication requirement for this site would be 6.9 m².

There are three parkland dedication by-laws in the City that are currently under review and in the process of being harmonized. A concern voiced at the draft 'Parkland By-Law' public consultation in November 2011 identified that high density parkland dedication rate requirements have not historically been consistently administered across the City. In order to correct this inequity between developments in the former Townships and the City, an interim practice has been occurring where consistent parkland dedication requirements apply to all types and densities of development in all parts of the City. Currently, the practice of requiring a more forgiving, low density parkland dedication rate of 5% has been occurring. It should be recognized that this interim strategy is not sustainable and will not, in the long term, adequately

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contribute toward providing sufficient public land for park and recreational use for future City residents. The new harmonized parkland dedication by-law will address these and other challenges with the existing by-laws while recognizing and respecting the unique constraints of Kingston's contemporary land development industry. By-Law 8820, for example, was written in 1976 in a period of different City priorities and development trends.

Based on the low density 5% rate with credit for existing commercial use, the required parkland dedication for 172 Ontario Street would be 4.6 m². Traditionally, an appraisal of market value is the required mechanism to determine the payment-in-lieu of land conveyance. The applicant has not provided an appraisal to the City; however, the market rate can be estimated based on the recent sale of the property. Based on the assumption that the recent sale price of the property represents a fair and present market value, the cash-in-lieu of conveying parkland from this development site would be \$16,680.

City Priorities

The development of 172 Ontario Street is in keeping with Council's direction in terms of sustainable development through the preservation and adaptive re-use of built heritage resources. In the City's current Parkland Dedication By-Law (By-Law 8820), there are currently no provisions to reduce or waive parkland dedication cash-in-lieu for redevelopment of heritage buildings. A concern voiced at the draft 'Parkland Dedication By-Law' public consultation in November 2011 identified that reduction of parkland dedication cash-in-lieu be considered for redevelopment of heritage buildings in the future harmonized by-law.

Scale of Development

The proposed scale of redevelopment of 172 Ontario Street does not significantly increase the number of residential units to the area and when aggregated with the existing high density of residents and the complement of adequate existing parkland within close proximity, the increased burden of use on the neighbouring parkland is expected to be modest.

EXISTING POLICY/BY LAW:

By-Law 8820, former City of Kingston Parkland Dedication By-Law (Exhibit 'C')

Planning Act

Under section 42, it permits a municipality to require parkland dedication of 2% of the total land area for commercial development and 5% for residential development or 1 hectare of land per 300 dwelling units. In situations where parkland conveyance is not practical or not desired then the Planning Act permits a municipality to require payment of cash-in-lieu of parkland.

Official Plan

The City of Kingston's Official Plan sets out policies with respect to parkland use, acquisition and dedication in accordance with the Planning Act. The Official Plan sets out guidelines where cash-in-lieu of parkland shall be considered instead of conveyance of land. Targeted areas of intensification are also outlined in the Official Plan.

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NOTICE PROVISIONS:

N/A

ACCESSIBILITY CONSIDERATIONS:

N/A

FINANCIAL CONSIDERATIONS:

The proposed reduction request is estimated at \$16,680 for cash-lieu of parkland contributions to the City for future parkland acquisition purpose

CONTACTS:

Wally Ferris, Director, Recreation & Leisure Services	613-546-4291 ext. 1302
Neal Unsworth, Manager, Parks Development	613-546-4291 ext. 1811

OTHER CITY OF KINGSTON STAFF CONSULTED:

Grant Bain, Director, Planning & Development	613-546-4291 ext. 3252
Marnie Venditti, Manager, Planning Development Approvals	613-546-4291 ext. 3256
Shirley Bailey, Manager, Heritage and Urban Design	613-546-4291 ext. 3253
Mark McLaughlin, Senior Legal Counsel	613-546-4291 ext. 1365

EXHIBITS ATTACHED:

Exhibit 'A'	BPE Development Letter – March 16, 2012
Exhibit 'B'	Key Map of Proposed Development
Exhibit 'C'	By-Law 8820, Former City of Kingston Parkland Dedication By-Law

Exhibit 'A'



March 16, 2012

Dear Commissioner Hurdle,

I'd like to formally request that our proposed development at 172 Ontario St be waived from Parkland Fees.

As you may be aware given the fact that the building is heritage we have already incurred several fees regarding the required Heritage Impact Statement, Archaeological Statement and Site Plan Control which in itself created several small projects and costs. Site plan control was only required because the building was a designated heritage building.

Further to the expensive costs above, the overall costs of construction are much greater when dealing with a building of this vintage and ensuring that it is restored to its glory using the proper materials and finishes which in the end helps to reflect a strong downtown and City of Kingston.

All this being said we are grateful to be able to work on and restore these beautiful old buildings as this is our passion. Our overall preliminary costs are adding up and we kindly ask you support the removal of the parkland bylaw fee for our project at 172 Ontario St given our other extensive costs due to the buildings heritage status.

Thank you for your time and consideration.

Kind regards,

Ben Pilon

www.bpedevelopment.com
Kingston | Niagara Falls | Guelph

Exhibit 'B'



Exhibit 'C'

City of Kingston

Ontario

BY-LAW NO. 8820

**A BY-LAW TO PROVIDE FOR LAND FOR PARK PURPOSES
PURSUANT TO SECTION 35(b) OF THE PLANNING ACT**

PASSED: April 12, 1976

As Amended By

Clause 28, Report No. 7, 1978-79 (By-Law No. 9414) - December 18, 1978
By-Law No. 80-120 - May 26, 1980
By-Law No. 80-227 - October 20, 1980
By-Law No. 81-61 - January 26, 1981
By-Law No. 81-290 - March 29, 1982
By-Law No. 2008-68 - February 19, 2008

(Office Consolidation)

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City of Kingston By-law No. 8820

"A BY-LAW TO PROVIDE FOR LAND FOR PARK PURPOSES PURSUANT TO SECTION 35(b) OF THE PLANNING ACT"

PASSED: April 12, 1976

WHEREAS Section 42 (1) of the Planning Act, R.S.O. 1990, Chapter P.13 as amended, provides that as a condition of development or redevelopment of land, the council of a local municipality may, by by-law applicable to the whole municipality or to any defined area or areas thereof, require that land in an amount not exceeding two percent (2%) for development or redevelopment for commercial or industrial purposes, and for residential development or redevelopment land in an amount not exceeding five percent (5%) of the land be conveyed to the municipality for park or other public recreational purposes.

(By-Law No. 8820 – 1976; 2008-68)

AND WHEREAS Section 42 (6) of the said Planning Act also provides that the council of a local municipality may require the payment of money to the value of the land otherwise required to be conveyed under this section in lieu of the conveyance.

(By-Law No. 8820 – 1976; 2008-68)

THEREFORE the Council of The Corporation of the City of Kingston enacts as follows:

1. This by-law applies to all land within the corporate limits of the City of Kingston as set out in Schedule "B".

(By-law No. 8820; 2008-68)

2. That as a condition of development or redevelopment of lands or any part thereof within the limits of the City of Kingston, as defined on Schedule B, the owner of the land shall convey, or cause to be conveyed, to the Corporation, land for park or other public recreational purposes in the following manner:
 - (a) in the case of land proposed for development or redevelopment for commercial or industrial purposes, two percent (2%) of the said land shall be conveyed to the Corporation;
 - (b) in the case of land proposed for development or redevelopment for residential development or redevelopment five percent (5%) of the said land shall be conveyed to the Corporation;

(By-law No. 8820; 2008-68)

3.
 - (a) In lieu of requiring the conveyance of land, the Corporation may at its discretion require the payment of money equal to the value of the land otherwise to be conveyed or such combination of land and money as Council may require.
 - (b) For the purpose of determining the amount of such payment, 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.

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- 3 cont'd: (c) The payments required under this By-law shall be made prior to the issuance of a building permit for the land to be developed or redeveloped.

(By-law No. 8820; 2008-68)

4. With respect to the creation of additional dwelling units only, a building permit shall not be issued for the construction, alteration or addition to any building or part thereof, until the owner conveys land to the City. This requirement shall not apply to the first two units of any dwelling, except insofar as it relates to an existing single family dwelling to which both floor area and an additional dwelling are added. The land conveyance shall be in accordance with the amounts shown on Schedule "A" attached hereto

(By-Law No. 81-290 – 1981; 2008-68)

- (a) City Council of The Corporation of the City of Kingston may, at its discretion, accept money in lieu of the land requirement referred to above for parks purposes where one of the following conditions applies. The money shall be the value of the required lands in accordance with **Schedule "A"**:

- (i) where the land parcel would be too small or inappropriately located;
- (ii) in an area where there already exists an access of park lands;
- (iii) where the condition of the land is such as to be unsuitable for park purposes;
- (iv) where no opportunity exists to enlarge existing neighbourhood parks;
- (v) where no opportunity exists to obtain useful waterfront land;
- (vi) where the project concerned is a large development which is completely within reasonable walking distance of an existing neighbourhood park, such distance not to be measured along a line crossing an Expressway or an Arterial Road;
- (vii) where the project concerned is a large development which, if money-in-lieu of land were to be required, nevertheless, would not overload the existing neighbourhood parks system;

(By-Law No. 80-120 – 1980; 81-290 – 1982; 2008-68)

- (b) The land requirement as set out in **Schedule "A"** shall not apply for the following:
- (i) the density of the development or redevelopment is less than 17.3 dwelling units per net residential hectare, in which case the requirement shall be the deeding to the City of lands equal to 5% of the lands for which the subject permit applies, or the payment of 5% of the market value of the lands to which the subject permit applies, the form of the payment to be in land or cash at the discretion of the City Council of The Corporation of the City of Kingston;

(By-Law No. 8820 – 1977; 2008-68)

- (ii) the land involved is within a plan of subdivision approved in accordance with Section 33 of the **Planning Act** for which land or cash in lieu thereof has previously

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"A BY-LAW TO PROVIDE FOR LAND FOR PARK PURPOSES PURSUANT TO SECTION 35(b) OF THE PLANNING ACT"

4. b) ii) cont'd: been conveyed to the City for park or public purposes pursuant to a condition imposed by the Minister;
(By-Law No. 8820 – 1977; 2008-68)
- (iii) the land involved is to be used by senior citizens, handicapped or other non-profit groups, in which case City Council of The Corporation of the City of Kingston, if in its opinion it is in the public interest to do so, may permit deeding of lands at a lesser rate if additional and community facilities are included;
(By-Law No. 8820 – 1977; 2008-68)
- (iv) the development or redevelopment project involves the replacement or renovation of deteriorated housing, in which case City Council of The Corporation of the City of Kingston, if in its opinion it is in the public interest to do so, may waive deeding of the lands or may permit deeding of lands at a lesser rate if additional and community facilities are included;
(By-Law No. 80-120 – 1980; 2008-68)
- (v) the development or redevelopment project provides amenity area or play space substantially in excess of the amounts required by Zoning By-Law No. 8499, in which case the City Council of The Corporation of the City of Kingston, in its opinion it is in the public interest to do so, may permit the deeding of land at a reduced rate.
(By-Law No. 81-290 – 1981; 2008-68)
- (c) Notwithstanding the foregoing, the 5% cash payment required to be paid by Bob Martin Construction Co. Ltd. with respect to the construction of two apartment buildings on property north of Princess Street and west of Portsmouth Avenue shall not be required to be paid on application of building permit for footings only on or before the 31st day of December, 1978; but shall be required to be paid when a building permit for the remainder of the work on this project is applied for, not later than July 31, 1979.
(By-Law No. 80-120 – 1980; 2008-68)
- (d) Notwithstanding the foregoing, the provisions of this by-law shall not apply to the development proposed by Mr. B. Trotter at 320 King Street East, being a conversion from a one-family dwelling to a two-family dwelling, with no increase in floor space.
(By-Law No. 81-61 – 1981; 2008-68)
5. Where deteriorated housing is being replaced, the foregoing provisions shall apply only to the increased number of housing units being created.
(By-Law No. 8820 – 1976; 2008-68)
6. This by-law does not apply to any lands within the City of Kingston that are within a plan of subdivision approved under Section 33 of the **Planning Act** if land in the plan was conveyed to the municipality for park or public purposes pursuant to a condition imposed by the Minister or a payment in lieu of such conveyance was accepted by the municipality.
(By-Law No. 8820 – 1976; 2008-68)

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"A BY-LAW TO PROVIDE FOR LAND FOR PARK PURPOSES PURSUANT TO SECTION 35(b) OF THE PLANNING ACT"

7. It is hereby declared that notwithstanding any section or sections of this by-law or parts thereof, may be found by any Court of Law to be bad or illegal or beyond the power of the Council to enact, such section or sections or parts thereof shall be deemed to be severable and that all other sections or parts of this by-law are separate and independent therefrom and enacted as such.
(By-Law No. 8820 – 1976; 2008-68)
8. Any person convicted of a breach of any section or sections of this by-law or parts thereof shall forfeit and pay at the discretion of the convicting Magistrate, a penalty not exceeding the sum of **One Thousand Dollars (\$1,000.00)** (exclusive of costs) for each offence, and in default of payment of the said penalty and costs forthwith, the said penalty and costs, or costs only, may be levied by distress and sale of the goods and chattels of the offender; and in the case of there being no distress found out of which such penalty can be levied, the convicting Magistrate may commit the offender to the Common Goal of the County of Frontenac, for any period not exceeding six calendar months, unless the said penalty and costs (if any), including the costs of said distress and of the committal and conveyance of the offender to the said Goal, are sooner paid.
(By-Law No. 8820 – 1976; 2008-68)
9. This by-law shall come into force and take effect on its passing.
(By-Law No. 8820 – 1976; 2008-68)

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"A BY-LAW TO PROVIDE FOR LAND FOR PARK PURPOSES PURSUANT TO SECTION 35(b) OF THE PLANNING ACT"

SCHEDULE "A"

LAND REQUIREMENTS FOR PARKS PURPOSES

Housing Type	Land Requirement (expressed as multiples of the number of proposed dwelling units per housing type)
One & Two Family Dwellings	Exempt (except as noted in Section 1 of the by-law, in which case 18.5 m ² per dwelling unit)
Multiple Family Dwellings (other than row dwellings)	10.0 m ² per dwelling unit (after the first two units)
Row Dwellings	21.0 m ² per dwelling unit (after the first two units)

(By-Law No. 81-290 - 1981)

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