THE CORPORATION OF THE TOWN OF LINCOLN

BY-LAW NO. 2024-05

A BY-LAW REQUIRING LAND AND/OR CASH IN LIEU OF LAND FOR PARK OR OTHER PUBLIC RECREATIONAL PURPOSES AS A CONDITION OF DEVELOPMENT OR REDEVELOPMENT OF LAND AND TO REPEAL BY-LAW NO. 96-81

WHEREAS:

1. Section 42 of the Planning Act provides that, as a condition of the development or the redevelopment of land, the 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 two percent (2%), and in all other cases five percent (5%), be conveyed to the municipality for park or other public recreational purposes;

2. Section 51.1 of the Planning Act provides than 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, two percent (2%), and in all other cases five percent (5%);

3. Section 53 of the Planning Act provides that Section 51.1 of the Planning Act also applies to the granting of consents;

4. Section 42 of the Planning Act provides that as a condition of the Development or Redevelopment of land, the municipality may require:

   (a) that such land be conveyed at the rate of one (1) hectare for each six hundred (600) new 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/or

   (b) the payment of money to the value of land otherwise required to be conveyed at the rate of one (1) hectare for each one thousand (1,000) new dwelling units, provided that the municipality has specific policies dealing with the provision of lands for parks or other public recreational purposes, and the use of this alternative requirement is included within its Official Plan;

5. The Town of Lincoln has enacted such specific policies dealing with the provision of land to be conveyed or the payment of money to the value of land otherwise required to be conveyed at the alternative rates; and

6. The Council of the Corporation of the Town of Lincoln wishes to use the provisions of the Planning Act, as supported by the policies of the Official Plan, for the purposes of acquiring and providing parkland for the use and enjoyment of the residents of the Town of Lincoln.

NOW THEREFORE, THE COUNCIL OF THE CORPORATION OF THE TOWN OF LINCOLN ENACTS AS FOLLOWS:

1.0 DEFINITIONS

1.1 In this by-law,

(1) “Accessory use” means an accessory use as defined in the Zoning By-law.

(2) "Accessory Building or Structure means an accessory building or structure as defined in the Zoning By-law.

(3) "Additional Residential Unit" means an additional residential unit as defined in the Development Charges Act, 1997, S.O. 1997, c.27 as amended, or any successor thereto.

(4) "Affordable Residential Unit" means an affordable residential unit as defined in Section 4.1 of the Development Charges Act, 1997, S.O. 1997, c.27 as amended, or any successor thereto.

(5) "Agricultural Use" means an agricultural use as defined in the Zoning By-law.

(6) "Attainable Residential Unit" means an attainable residential unit as defined in Section 4.1 of the Development Charges Act, 1997, S.O. 1997, c.27 as amended, or any successor thereto.

(7) "Board of Education" means a board defined in subsection 1(1) of the Education Act, R.S.O. 1990, c.E.2, as amended, or any successor thereto.

(8) "Building Code Act" means the Building Code Act, 1992, S.O. 1992, c. 23, as amended, or any successor thereto.

(9) "Building Permit" means a permit pursuant to the Building Code Act, 1992, S.O. 1992, c. 23, as amended, or any successor thereto.

(10) "Cash in Lieu of Parkland" means payment in lieu of parkland otherwise required to be conveyed.

(11) "Chief Building Official" means the Chief Building Official, or designate, for the Town.

(12) "Commercial Use" means any non-residential development not defined under "institutional" or "industrial" and includes retail development and hotels/motels.

(13) "Complete Application" means an application for Development or Redevelopment submitted to the Town pursuant to the Planning Act and includes all of the supporting information and materials required under the Planning Act and any other legislation or regulation, and any other supporting information or materials identified as being required by the Town, in its sole and absolute discretion.

(14) "Conservation Authority" means the Niagara Peninsula Conservation Authority.

(15) "Conversion to a Different Use" means a change in the use of a building and/or Land from one use to another use pursuant to an approved Zoning By-law Amendment and Building Permit issued.

(16) "Council" means the Council of the Corporation of the Town of Lincoln.

(17) "Development or Redevelopment" 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 increasing the size or usability thereof and includes redevelopment. Notwithstanding the foregoing, development does not include temporary uses as defined in Section 1.1(41) of this By-law.

(18) "Director of Planning and Development" means the Director of Planning and Development, or designate, for the Town.

(19) "Dwelling Unit" means a dwelling as defined in the Zoning By-law. Residential unit and Dwelling Unit shall have a corresponding meaning.

(20) "Existing" means a building or structure existing as of the date of the passing of this By-law.

(21) "Farm Helphouse" means a means a dwelling unit for seasonal or full-time farm help located within a farm building, ancillary to a farm and located on the same Lands.

(22) "Greenhouse" means a building or structure for the growing of such items as flowers, bushes, shrubs, trees, plants, fruits, vegetables, and other types of nursery stock.

(23) "Gross Floor Area" means the total floor area of all floors above grade of a dwelling unit measured between the outside surfaces of exterior walls or between the outside surfaces of exterior walls and the centre line of party walls dividing the dwelling unit from other dwelling units or other portion of a building.

In the case of a non-residential building or structure, or in the case of a mixed-use building or structure in respect of the non-residential portion thereof, the total area of all building floors above or below grade measured between the outside surfaces of the exterior walls, or between the outside surfaces of exterior walls and the centre line of party walls dividing a non-residential use and a residential use, except for:

(a) a room, elevator, or enclosed area within the building or structure above or below grade that is used exclusively for the accommodation of heating, cooling, ventilating, electrical, mechanical or telecommunications equipment that services the building;

(b) loading facilities above or below grade; and

(c) a part of the building or structure below grade that is used for the parking of motor vehicles or for storage or other accessory use.

(24) "Inclusionary Zoning Residential Unit" means an inclusionary zoning residential unit as defined in the Development Charges Act, 1997, S.O. 1997, c.27 as amended, or any successor thereto.

(25) "Industrial Use" means industrial use as defined in the Zoning By-law.

(26) "Institutional Use" means institutional use as defined in the Zoning By-law.

(27) "Land" means the lands to be Developed or Redeveloped.

(28) "Mixed-use Building" means a building or structure used for both residential and non-residential use.

(29) "Municipality" means the Corporation of the Town of Lincoln. Municipality and Town shall have the same meaning.

(30) "Non-profit Housing Unit" means a non-profit housing unit as defined in the Development Charges Act, 1997, S.O. 1997, c.27 as amended, or any successor thereto.

(31) "Non-residential use" means a building or structure of any kind whatsoever used, designed, or intended to be used for other than a residential use or an institutional use and includes all commercial and industrial uses.

(32) "Natural Areas" means and includes shorelines, floodplains, significant valleylands, wetlands, significant woodlands, fish habitat, areas of natural and scientific interest, significant habitat or endangered species, significant natural habitat, natural corridors, and key hydrologic features.

(33) "Official Plan" means the Official Plan of the Town, as approved and amended, or any successor thereto.

(34) "Owner" means the owner of Land or a person who has made application for an approval for the Development or Redevelopment of land upon which a development charge is imposed.

(35) "Parkland" means land for parks and other public recreational purposes as described in the Official Plan and the Parks, Recreation and Culture Master Plan.

(36) "Parks Policy Plan" means the Parks, Recreation and Culture Master Plan adopted by the Town, as amended or any successor thereto.

(37) "Place of Worship" means a place of worship as defined in the Zoning By-law.

(38) "Planning Act" means the Planning Act, R.S.O. 1990, c.P.13, as amended, or any successor thereto.

(39) "Recreation" means lands, buildings, spaces, and structures used for both indoor and/or outdoor recreation programs including arenas, community centres, senior centres, sport fields, rinks/arenas, lawn bowling fields, tennis courts, pickleball courts, basketball courts and other similar recreational activities.

(40) "Region" means the corporation of the Regional Municipality of Niagara.

(41) "Residential Use" means lands, buildings or structures of any kind whatsoever used, designed, or intended to be used as living accommodations for one or more individuals.

(42) "Temporary Garden Suite" means a temporary garden suite as defined in the Zoning By-law.

(43) "Temporary Residential Use" means a temporary residential use as defined in the Zoning By-law.

(44) "Temporary Use" means a temporary use as defined in the Zoning By-law and also includes a temporary garden suite and temporary residential use.

(45) "Town" means the Corporation of the Town of Lincoln. Municipality and Town shall have the same meaning.

(46) "Zoning By-law" means Zoning By-law No. 2022-50 adopted by the Town and approved, as amended or any successor thereto.

2.0 APPLICATION OF BY-LAW

2.1 This By-law applies to all lands within the Town.

2.2 No person shall Develop or Redevelop Land within the Town unless they have first conveyed or caused to be conveyed a portion of the Land to the Town for Parkland, or paid Cash in Lieu of Parkland dedication, in accordance with this By-law.

3.0 CONVEYANCE OF LAND FOR PARKS PURPOSES AND CASH IN LIEU OF PARKLAND DEDICATION

3.1 The dedication of Parkland or the acceptance of Cash in Lieu of Parkland for park purposes or other public recreational purposes required as a condition of Development or Redevelopment shall be in accordance with the following requirements, pursuant to Sections 42, 51.1 and 53 of the Planning Act:

(a) For commercial and industrial purposes:

(i) The conveyance of two percent (2%) of the Land being Developed or Redeveloped, pursuant to Section 42(1) of the Planning Act;

(ii) The payment of money equal to the value of the Land required to be conveyed in Section 3.1(a)(i);

(iii) 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, in accordance with Section 42(6.4) of the Planning Act;

(iv) Where the Land is subject to site plan approval or approval of an amendment to the Zoning By-law, the amount of the Cash in Lieu of Parkland payment is to be based on the value of the Land at the time of the approval of the site plan application or the approval of an amendment to the Zoning By-law, in accordance with Section 42(2.1) of the Planning Act. Section 3.1(a)(iv) does not apply if, on the date the first Building Permit is issued for the Development or Redevelopment, more than two (2) years have elapsed since the approval of the site plan application or the approval of the amendment to the Zoning By-law.

(b) For all other purposes:

(i) The conveyance of five percent (5%) of the Land being Developed or Redeveloped, pursuant to Section 42(1) of the Planning Act, or the conveyance of land at the alternate rate of one (1) hectare for each six hundred (600) dwelling units proposed, whichever is greater, in accordance with Section 42(3) of the Planning;

(ii) The payment of money equal to five percent (5%) of the value of the Land being Developed or Redeveloped; or the payment of money equal to the alternate rate of one (1) hectare for each one thousand (1,000) dwelling units proposed, whichever is greater;

(iii) 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, in accordance with Section 42(6.4) of the Planning Act.

(iv) Where the Land is subject to site plan approval or an amendment to the Zoning By-law, the amount of the Cash in Lieu of Parkland payment is to be based on the value of the Land at the time of the approval of the site plan application or the approval of an amendment to the Zoning By-law, in accordance with Section 42(2.1) of the Planning Act. Section 3.1(b)(iv) does not apply if, on the date the first Building Permit is issued for the development, more than two (2) years have elapsed since the approval of the site plan application or the approval of an amendment to the Zoning By-law.

(v) The dedication of land required to be conveyed in Section 3.1(b)(i) and/or the payment of money equal to the value of the Land required to be conveyed in Section 3.1(b)(ii) shall be capped as follows:

- In the case of Land proposed for Development or Redevelopment that is five (5) hectares or less in area, ten percent (10%) of the Land or the value of the Land, as the case may be; and
- In the case of Land proposed for Development or Redevelopment that is greater than five (5) hectares in area,

fifteen percent (15%) of the Land or the value of the Land, as the case may be.

4.0 REDEVELOPMENT AND CONVERSION

4.1 If Land has been conveyed or is required to be conveyed to the Town for Parkland or a Cash in Lieu of Parkland payment has been received by the Town pursuant to Section 3 of this By-law, no additional conveyance or payment in respect of the Land subject to the earlier conveyance or payment will be required by the Town in respect of the Development or Redevelopment unless:

(a) there is a change in the proposed Development or Redevelopment which would increase the density of the Development or Redevelopment; or

(b) Land originally proposed for Development or Redevelopment for Commercial Use or Industrial Use is now proposed to be developed or redeveloped for other purposes; or

(c) where additional land is required pursuant to Section 4.1(a) or (b) herein, the conveyance will be subject to the increase in Dwelling Units and/or land use proposed.

4.2 If a development on the Land involves the demolition and replacement of a building or structure, or the conversion from one use to another use, a redevelopment credit shall be equivalent to:

(a) the number of dwelling units demolished/converted multiplied by the applicable Cash in Lieu of Parkland payment in place at the time the Cash in Lieu of Parkland payment is payable, or

(b) the gross floor area of the building demolished/converted multiplied by the current non-residential Cash in Lieu of Parkland payment in place at the time the Cash in Lieu of Parkland payment is payable.

4.3 The redevelopment credit provided under Section 4.2 of this By-law shall be available only if the same Land was improved with the occupied structures, on which the credit is based, within the five (5) years immediately preceding the issuance of the Building Permit required by the Development or Redevelopment and those structures have been demolished pursuant to a lawfully issued demolition permit.

5.0 EXEMPTIONS

5.1 Notwithstanding the provisions of this By-law, exemptions, and reductions from the dedication of Parkland and Cash in Lieu of Parkland Payments will not be imposed with respect to:

(a) Additional Residential Units;

(b) Affordable Residential Units. Any exemption or reduction for Affordable Residential Units which implement the *More Homes Built Faster Act, 2022,* which have not been proclaimed in force as of the date of the passing of this By-law, shall come into force on the date that those provisions of the *More Homes Built Faster Act, 2022* come into force;

(c) Attainable Residential Units. Any exemption or reduction for Attainable Residential Units shall come into force on the date that those provisions of the *More Homes Built Faster Act, 2022* come into force;

(d) Inclusionary Zoning Units;

(e) Non-Profit Housing Units;

(f) lands owned by and used for the purpose of the Town;

(g) lands owned by and used for the purposes of the Region of Niagara;

(h) lands owned by and used for purposes of the Niagara Peninsula Conservation Authority;

(i) lands owned by and used for purposes of a Board of Education;

(j) lands owned by and used by a College or University governed by the Education Act, R.S.O. 1990, for non-commercial, institutional and/or educational purposes;

(k) an Indigenous Institute prescribed for the purposes of Section 6 of the Indigenous Institute Act, 2017, S.O. 2017, c. 34;

(l) lands used or to be used for a Place of Worship or for the purposes of a cemetery or burial ground exempt from taxation under the Assessment Act, R.S.O. 1990, c.A.31;

(m) the development of non-residential buildings for Agricultural Use;

(n) the development of a Farm Helphouse;

(o) temporary buildings and structures in accordance with Sections 1.1 (42) to (44) of this By-law; and

(p) the issuance of a Building Permit if the only effect of the action is to permit the enlargement of an existing Dwelling Unit and the number of Dwelling Units within the residential building is not increased.

6.0 REQUIREMENTS AND TIMING OF PARKLAND DEDICATION

6.1 To ensure that lands which constitute a contribution toward Parkland in Section 3 are acceptable to the Town, the lands must satisfy the requirements set out in the Official Plan and the Parks, Recreation and Culture Master Plan.

6.2 Where land is required to be conveyed in accordance with Section 3 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 51.1 or 53 of the Planning Act, the conveyance of land may be required as a condition of approval, and the said lands shall be conveyed to the Town either prior to or immediately upon registration of the plan of subdivision or upon the consent being given, as determined by the Town.

(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 Town shall require the conveyance of land as a condition of Development or Redevelopment prior to the registration of the related site plan agreement.

7.0 APPRAISAL AND TIMING OF CASH IN LIEU OF PARKLAND PAYMENTS

7.1 To determine the value of any Cash in Lieu of Parkland payment in accordance with Section 3 of this By-law, an appraisal of the Lands to be Development or Redeveloped is required. Where lands are subject to site plan approval or an amendment to the Zoning By-law, the appraisal must be submitted at the time of the submission of the application. The appraisal shall be prepared by one of the qualified consultants on the list maintained by the Town. The appraisal shall be completed to the satisfaction of the Director of Planning and Development.

7.1 Where a Cash in Lieu of Parkland payment is required to be paid in accordance with Section 3 of this By-law, the Cash in Lieu of Parkland payment is payable prior to the issuance of the first Building Permit on the Lands to be Developed or Redeveloped.

7.2 A Building Permit in relation to a building on the Lands to be Developed or Redeveloped shall not be issued by the Chief Building Official or designate unless the cash in lieu payment has been paid.

8.0 REQUIREMENTS FOR THE ACCEPTANCE OF ALTERNATIVE LANDS AS PARKLAND DEDICATION

8.1 In accordance with Section 42(4.31) of the Planning Act, the Town may consider the acceptance of the following types of lands as contribution towards the Parkland dedication requirements of Sections 3.1(a)(i) and 3.1(b)(i) of this By-law, subject to Sections 8.2 and 8.3 of this By-law:

(a) conveyance of part of an abutting parcel; or

(b) lands subject to an easement or other right-of-use restriction; or

(c) lands encumbered by below grade infrastructure; or

(d) other interest in land which is sufficient to allow the land to be used for parks or other public recreational purposes.

8.2 To ensure that lands which constitute a contribution toward Parkland in Section 8.1 are acceptable to the Town, the lands must satisfy the applicable requirements set out in the Official Plan, the Parks, Recreation and Culture Master Plan, as well as the following requirements:

(a) any easement, encumbrance, or right-of-use on the lands shall not limit or restrict the Town's access and use of the lands for the purposes intended;

(b) the lands must remain open space and accessible to the general public at all times such that the function is consistent with that of a public park;

(c) the lands must be located along the frontage and/or the exterior side yard of a parcel so that they are visible from a public street and easily accessed by the public;

(d) the Owner must at their expense and to the satisfaction of the Town, prepare at minimum, a design of the space which incorporates the following:

(i) pedestrian comfort;

(ii) pedestrian access and circulation;

(iii) public safety;

(iv) active edges which connect with the Town's existing public realm;

(v) are located such that they no conflict with building servicing such as loading and vehicular parking; and

(vi) provides design elements such as play structures, seating, tables, public art, landscaping, hard surfaces, lighting, weather protection, signage and other public amenities;

(e) An easement in favour of the Town is provided in perpetuity to ensure public use of the lands to the satisfaction of the Town; and

(f) An agreement is entered into with the Town to set out the Owner's obligations regarding construction of the space and facilities, maintenance (both repair and reconstruction), liability insurance, and operational issues such as garbage removal and snow removal.

9.0 APPLICABILITY OF BY-LAW

9.1 Parkland dedication and/or Cash in Lieu of Parkland dedication shall be imposed on all lands, buildings or structures that are Developed or Redeveloped for residential, institutional, or non-residential uses if the development requires:

(a) the passing of a zoning by-law or an amendment to a zoning by-law under Section 34 of the Planning Act;

(b) the approval of a site plan application under Section 41 of the Planning Act;

(c) a conveyance of land to which a by-law passed under Subsection 50(7) of the Planning Act applies;

(d) the approval of a plan of subdivision under Section 51 of the Planning Act;

(e) a consent under Section 53 of the Planning Act;

(f) the approval of a description under Section 50 of the Condominium Act, 1998, S.O. 1998, c. 19; or

(g) the issuing of a Building Permit under the Building Code Act, 1992, S.O. 1992, c. 23, in relation to a building or structure.

10.0 GENERAL PROVISIONS

10.1 The headings contained in this by-law are for convenience of reference only and shall not affect the construction or interpretation of this by-law.

10.2 If for any reason, any provision, section, subsection, or paragraph of this by-law is held to be invalid, it is hereby declared that all of the remainder of this by-law shall continue in full force and effect until repealed, re-enacted, or amended, in whole or in part, or dealt with in any other way.

10.3 In this By-law, unless the contrary intention is indicated, words used in the singular shall include the plural.

10.4 The word "and" is an inclusive conjunction, the use of which indicates that all items or phases in that section, article, or list in which it appears are permitted or required as the case may be. The word "or" is an alternative conjunction, the use of which indicates alternative or optional items or phases, as the case may be; however, notwithstanding the foregoing, where the context permits, the word "or" may also be an inclusive conjunction having the same meaning as the word "and".

10.5 Any reference to legislation, plans or policies in this By-law includes the legislation, plan or policy referred to and its amendments as well as any subsequent legislation, plan or policy which may replace it, and its amendments thereto.

11. DATE BY-LAW IN FORCE

11.1 This By-law shall come into force and take effect on the date of its final passing. The provisions of this By-law which implement the provisions of the *More Homes Built Faster Act, 2022,* which have not been proclaimed in force as of the date of the passing of this By-law, shall come into force on the date that those provisions of the *More Homes Built Faster Act, 2022* come into force.

12.0 REPEAL

12.1 By-law No. 96-81 is hereby repealed.

PASSED AND ENACTED on the 5th day of February 2024

MAYOR: SANDRA EASTON

CLERK: JULIE KIRKELOS