



Corporation Of The City Of Kingston

Ontario

By-Law Number 2013-107

**A By-Law To Provide For The Conveyance Of Land For Park Purposes,
Or Cash-In-Lieu Of Parkland Conveyance**

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**A By-Law To Provide For The Conveyance Of Land For Park Purposes,
Or Cash-In-Lieu Of Parkland Conveyance**

Passed: May 21, 2013

Whereas Section 42, 51.1 and 53 of the Planning Act, R.S.O. 1990, c.P.13, as amended, authorizes Council to pass a By-Law requiring land or cash-in-lieu of the land to be conveyed to the municipality for park or other public recreational purposes as a condition of development, redevelopment, or subdivision of land(s): and

Whereas the Council of The Corporation of the City of Kingston has established an Official Plan that contains specific policies with respect to the provision of lands for park or other recreational purposes;

Therefore the Council of The Corporation of the City of Kingston **enacts** as follows:

Part I – Definitions

1. That for the purposes of this By-Law, the following definitions shall apply:
 - a) Buffer Land – the area of land in which development or site alternation is limited or prohibited in order to protect the natural heritage features or area or its ecological function from negative impacts. It does not include the areas of natural and scientific interest, significant aquatic or wildlife habitat areas, provincially or locally significant wetlands, coastal wetlands, habitat of endangered and threatened species, habitat of species tracked by the Ministry of Natural Resources' Natural Heritage Information Centre, and all land within the regulatory floodplain.
 - b) Centres - areas as set out in Schedule A (Corridor & Centres Boundaries) of this By-Law.
 - c) City - The Corporation of the City of Kingston.
 - d) Convey - to deed or transfer land for park or other public recreational purposes.
 - e) Corridor - the Princess Street corridor between the downtown core and the Cataraqui Town Centre as set out in Schedule A (Corridor & Centres Boundaries) of this By-Law.
 - f) Council - the Council of The Corporation of the City of Kingston.
 - g) Designate - a person who is an employee of The Corporation of the City of Kingston and who has been appointed by the Director to administer all or part of this By-Law on behalf of the Director.
 - h) Development - the creation of a new lot, a change in land use, or the construction of buildings and structures, requiring approval under the Planning Act.
 - i) Director - the Director of Recreation and Leisure Services or the Director responsible for parks development or his/her designate.

- j) Dwelling Unit - as defined in the applicable City of Kingston Zoning By-Law.
- k) Employment land – land designated as Business Park Industrial or General Industrial in the City’s Official Plan.
- l) Gross Floor Area - the sum of the floor areas of a building measured between the exterior walls or structure of a building for all floors above grade and below grade with the exception of areas as defined in the gross floor area definition of the applicable Zoning By-Law.
- m) Gross Land Area – gross land area of the entire development or redevelopment site, including the parcel of land which is to be dedicated for parks purposes or easements, but shall not include any lands designated as Environmental Protection Area.
- n) Heritage Building – an existing building or portion of a building on a Protected Heritage Property which is identified as a heritage attributes in the applicable designation By-Law, heritage conversation easement or identified as a heritage-contributing building in the applicable Heritage Conservation District Plan.
- o) Land Price Index - the new housing price index, for land only, for the Ottawa-Gatineau Region as published in the Canadian Housing Statistics, Housing Costs by Canadian Mortgage and Housing Corporation.
- p) Local Board - a public utility commission, public library board, local board of health, or other board, commission, committee, or body exercising authority with respect to the affairs of the municipality.
- q) Long Term Care Home - a facility for persons where the primary use shall be for receiving nursing care as regulated by the Long-term Care Act, 2007 or equivalent provincial or federal regulation(s).
- r) Market appraisal - a written opinion of fair market value of one or more parcels of land subject to development or redevelopment supported by presentation and analysis of relevant data by a certified accredited appraiser.
- s) Market value - the price in terms of money which a property should 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.
- t) Major Water Body – Lake Ontario, the St. Lawrence River, the Great Cataraqui River, Rideau Canal, Loughborough Lake, Collins Lake and the Little Cataraqui Creek up to Bath Road as outlined in Schedule B.
- u) 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).
- v) Occupied – a building occupied by a tenant for at least 12 consecutive months prior to the proposed development application.

- w) Parkland – developable lands that are suitable for the development of playing fields, play apparatuses, and community recreational and leisure facilities and that satisfy the criteria of Section 4 of this By-Law.
- x) Protected Heritage Property – a property designated under Part IV or Part V of the Ontario Heritage Act (OHA), including properties that are the subject of a Heritage Conservation Easement under Part II or Part IV of the OHA.
- y) Redevelopment – shall have the same meaning as Development.
- z) Rental affordable housing unit – a rental residential unit for low or moderate income households which:
 - i) monthly rent is less than or equal to 80% of the CMHC average monthly rent; and,
 - ii) is guaranteed to be affordable and is registered with the City as an affordable housing unit for a minimum of 15 years.
- aa) Williamsville Main Street – Special Policy Area as defined in the Official Plan which extends between the westerly limit of the Central Business District at Division Street and the Bath Road/Concession Street intersection, along the Princess Street Corridor.

(By-Law 2013-107; By-Law 2014-145; 2016-44)

Part II - Parkland Acquisition

Requirements for the Conveyance of Parkland

2. The purpose of this By-Law is to enable the City to provide land for public parks or other public recreational purpose. The City is permitted to require the conveyance of Parkland as a condition of Development or Redevelopment as regulated under the Planning Act. Land conveyed to the City 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.
3. As a condition of the Development of land, the City shall require that land be conveyed to the City for park purposes as follows:

Residential Uses

- a) When land is developed for a residential use:
- i) Where the gross density of the land(s) included within the Development application is 30 Dwelling Units per hectare or less, 5 percent of the Gross Land Area shall be conveyed to the City of Kingston;
 - ii) Where the gross density of the land(s) included within the Development application is greater than 30 Dwelling Units per hectare, 1.2 hectares per 1000 people not to exceed 1 hectare per 300 Dwelling Units, shall be conveyed to the City. Further, the conveyance generated shall not exceed a maximum of 10 percent of the Gross Land Area; or,
 - iii) Where the subject Development application is within the Centres or Corridor defined in Schedule A (Corridor & Centres) of this By-Law, 0.6 hectares per 1,000 people shall be conveyed to the City, to a maximum of 5 percent of the Gross Land Area.
- b) For a single residential lot created by consent to sever for the purpose of developing a single residential dwelling, a flat rate shall be applied as defined in Table A. The flat rate shall be adjusted annually as defined in Table A below, in accordance with the Land Price Index. This section shall not apply to plans of subdivision.
- c) Notwithstanding the flat rate identified in provision 3(b) Table A, land conveyance may be required at the residential rate outlined in 3(a) for a single residential lot created by consent to sever for the purpose of developing a single residential dwelling when:
- i) the lot is adjacent to a Major Water Body as identified in Schedule B;
or
 - ii) the lot is adjacent to an existing park; or,
 - iii) the lot contributes to a Council approved trail plan.

Population generation is to be based on Statistics Canada Average Household Size by Dwelling Unit type.

Table A

Flat rate for residential lot(s) created by Consent for the purpose of a single residential dwelling Development

Rural Area \$1,129 per new residential lot

Urban Area \$1,732 per new residential lot

Note: The flat rates shall be adjusted annually in accordance with the Land Price Index (the flat rates in this By-Law re in 2011 Prince Index values).

Commercial or Industrial Uses

- d) When land is developed for commercial or industrial use, 2 percent of the Gross Land Area shall be conveyed to the City of Kingston.

Long Term Care Home Uses

- e) When land is developed for Long Term Care Home use, 2 percent of the Gross Land Area shall be conveyed to the City.

A Mixture of Uses

- f) When land is developed for a mixture of uses, the land to be conveyed shall be as follows:
 - i) 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 Section 3; or,
 - ii) 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 Section 3.

Lands Suitable for Parkland Conveyance

- 4. City of Kingston shall accept land for passive and active Parkland and other public recreational purpose. These lands conveyed to the City shall be in a location and in a physical condition satisfactory to the City. Any land parcel configuration, size or location that is constrained or deemed undesirable, as determined by the City, 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) Equitably distributed within the proposed Development and, generally be in a centralized location within the proposed Development;
 - d) Abutting complementary neighbouring land uses;
 - e) Consistency with the Official Plan and secondary plan policies for the area.
- 5. The City may accept, at its discretion, the conveyance of Parkland that is not contiguous to the Development site provided that the value of the land is not provided off-site is approximately equal to the value of the lands from the subject Development site. The land valuation is determined as outlined in section 18 and 19.

Lands Not Suitable for Parkland Conveyance

6. The City shall not accept Environmental Protection Areas and Hazardous lands as defined in the Official Plan to fulfill Parkland conveyance requirements.

The City shall not accept the conveyance of any land, for park purpose that is considered, by the City, to be unsuitable as Parkland.

(By-Law 2013-107)

Part III – Exemptions/Reductions to Conveyance Requirements

Exemptions

7. No additional conveyance of Parkland will be required for subsequent Development where Parkland was previously conveyed for an existing, or former, Development on the site and/or where a site was Occupied within 10 years prior to the Development application, unless:

- a) There is an increase in density; or
- b) There is a change from institutional, industrial, or commercial to residential;
- c) Dwelling Units are added within an existing structure that increases the number of existing bedrooms.

In the above instances, the Development shall be subject to a recalculation of Parkland conveyance requirements and credited for existing or previous use and density.

8. **No conveyance for parkland is required for:**
 - a) Renovations to an existing residential building provided that it does not increase the number of Dwelling Units that lawfully existed prior to the renovation;
 - b) The enlargement of an existing Dwelling Unit;

- c) The creation of the first additional Dwelling Unit(s) to an existing residential structure, which meet all applicable requirement as set out in Table B below.

Exemption Requirement	Single Detached Dwelling	Semi-Detached Dwelling	Row / Townhouse	Other Types of Dwelling
New unit(s) in an existing structure	2	1	1	1
Total Gross Floor Area of new unit(s) that are fully contained within the existing structure	Does not exceed the Gross Floor Area of the existing Dwelling Unit	Does not exceed the Gross Floor Area of the existing Dwelling Unit	Does not exceed the Gross Floor Area of the existing Dwelling Unit	Does not exceed the smallest existing Dwelling Unit already in the building
New unit in an addition to an existing structure	1	1	1	0
Total Gross Floor Area of new unit in an addition to an existing structure	Does not exceed the lesser of 40% of the Gross Floor Area of the existing Dwelling Unit or 90 square metres	Does not exceed the lesser of 40% of the Gross Floor Area of the existing Dwelling Unit or 90 square metres	Does not exceed the lesser of 40% of the Gross Floor Area of the existing Dwelling Unit or 90 square metres	Not applicable
Total number of new units eligible for exemption	2	1	1	1

(By-Law 2013-107; 2016-44)

- d) Development proposed by any municipality, Local Board and other government bodies, hospital, post-secondary institution or school as defined in section 1(1) of the Education Act, a place of worship as exempted from taxation under Section 3 of the Assessment Act;
- e) A home-based occupation as defined by the Zoning By-Law; and/or,
- f) Employment land Development on City-owned lands within Business Parks, General Industrial lands or within the Old Industrial Project Area as described in the City's Brownfield Program.

(By-Law 2013-107; 2016-44)

Reductions

- 9. The City may reduce Parkland requirements for the conveyance of Environmental Protection Area for the purpose of obtaining a continuous open space corridor along the Great Cataraqui River as set out in the city of Kingston's Official Plan.
- 10. When the proposed Development is on land adjacent to a Major Water Body, the City, at its sole discretion, may reduce Parkland requirements in exchange for the conveyance of Buffer Land as set out in the Natural Lands and Parkland Acquisition Policy. Any land parcel configuration, size, or location that is deemed undesirable, as determined by the City, shall not be acceptable for conveyance.
- 11. Where Parkland conveyance is not possible, the City may, at its sole discretion, reduce Parkland requirements for the conveyance of an easement to permit public access and park use. The suitability of the easement land shall follow the same suitability consideration as parkland conveyance as set out in Section 4, 5 and 6. The Parkland reduction will not exceed a ratio of:
 - a) 1 unit area of Parkland to 2 units area of easement area for sites within the Centres and Corridor as defined in Schedule A; or,
 - b) 1 unit area of Parkland to 3 units area of easement area for sites outside of the Centres and Corridor.
- 12. Where land is subject to a reduction as per section 10 and 11, the exchange ratio will be not less than or equal to the higher of the reduction rates.
- 13. Where a multi-family dwelling residential Development is required to provide play space/children's play area, in addition to amenity space, under City of Kingston Zoning By-Law Number 8499, Downtown & Harbour Zoning By-Law Number 96-259 and Kingston Township Zoning By-Law Number 76-26, the Parkland conveyance shall be reduced by the amount of play space/children's play area provided to a maximum of 250 square metres if the play space/children's play area:
 - a) has an agreement registered on land title;
 - b) is designed and fitted out to the standards and satisfaction of the City;
 - c) is maintained to the standards and satisfaction of the City;
 - d) is adequately insured against liability to the satisfaction of the City; and
 - e) is open and accessible to the public at all times.

14. Where Parkland conveyance is not possible and cash-in-lieu of Parkland conveyance is accepted by the City, the cash-in-lieu of Parkland requirements may be reduced only in the following circumstances:
- a) When land is developed to include Rental Affordable Housing Units, the reduction may be proportionate to the number of rental affordable units provided, at the following rates:
 - i) where the rent is between 20 percent and 39 percent below the defined average market rent, a 50% reduction to the applicable cash-in-lieu of Parkland conveyance requirement per Rental Affordable unit; or,
 - ii) where the rent is 40 percent or greater below the defined average market rent, a 100% reduction to the applicable cash-in-lieu of Parkland conveyance requirement per Rental Affordable unit.
 - b) When the proposed Development is being undertaken by a Not-For-Profit Organization the cash-in-lieu of Parkland conveyance requirement may be reduced at the discretion of the Director. The amount of the reduction shall not exceed a land value equivalent of \$25,000. Any reduction above \$25,000 would require Council approval;
 - c) When newly created Dwelling Units are added to, or commercial or industrial Development that occurs in, a Protected Heritage Property, a fifty (50) percent reduction in the applicable Cash-in-Lieu of Parkland conveyance requirement will be applied, provided the cultural heritage value of the property is conserved to the satisfaction of the City and the new units are, or the commercial or industrial Development is:
 - i) located within the Heritage Building; or,
 - ii) fully contained within an area of an addition to the Heritage Building that does not exceed one hundred (100) percent of the Gross Floor Area of the Heritage Building. New units or commercial or industrial Development in an area of an addition that exceeds the Gross Floor Area of the Heritage Building will not qualify for the reduction.
15. Notwithstanding the cash-in-lieu of Parkland conveyance reductions identified in section 14, for Development within the Downtown and Harbour Special Policy area as defined in the Official Plan, the cash-in-lieu of Parkland shall not exceed the following:
- a) \$1,250 per new Dwelling Unit; or,
 - b) \$625 per new Dwelling Unit for Development subject to 14(a), or 14(c).

Note: The rates shall be adjusted annually in accordance with the Land Price Index (the rates in this section are in 2013 Land Price Index values)."

(By-Law 2013-107; By-Law 2014-145; 2016-44)

Part IV - Cash-in-lieu of Parkland Conveyance

Use of Cash-in-Lieu Provisions

16. Notwithstanding the cash-in-lieu of Parkland conveyance reductions identified in section 14, for Development within the Williamsville Main Street as defined in the Official Plan, the cash-in-lieu of Parkland shall not exceed \$2,000 per Dwelling Unit.

Note: The rates shall be adjusted annually in accordance with the Land Price Index (the rates in this section are in 2013 Land Price Index values).

(By-Law 2013-107; By-Law 2016-44)

17. Notwithstanding the cash-in-lieu of Parkland conveyance reductions identified in Section 14, for Development outside of the Downtown and Harbour Special Policy area and the Williamsville Main Street as defined in the Official Plan, the cash-in-lieu shall not exceed \$5,000 per dwelling unit.

Note: The rates shall be adjusted annually in accordance with the Land Price Index (the rates in this section is in 2013 Land Price Index values).

(By-Law 2013-107; By-Law 2014-145; 2016-44)

18. It is the objective of the City to promote the conveyance of land through the Parkland dedication process. However, the City, at its discretion, may accept the payment of money, or a combination of land and payment of money, up to the value of the land otherwise required to be conveyed in lieu of the conveyance of land including any permitted reduction(s). This is applicable to residential, commercial and industrial Developments or Redevelopments.

At its discretion, the City may accept cash-in-lieu of Parkland, as follows:

- a) Where no opportunity exists to provide suitable Parkland;
- b) Where the parcel of land is too small, inappropriately configured and/or too poorly located to meet Parkland needs;
- c) Where the required dedication of land would render the remainder of the site unusable or impractical for Development or Redevelopment, as determined by the City;
- d) Where the City has identified land in a more appropriate or accessible location and that has been or is to be acquired by the City;
- e) Where no opportunity exists to obtain waterfront land;
- f) Where the area being developed or redeveloped is already well served with Parkland; or
- g) for a rural severance.

All money received by the City through payments of cash-in-lieu of Parkland shall be paid into the Cash-in-Lieu of Parkland Reserve Fund.

Land Valuation

19. 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 from a Certified Appraiser reviewed and accepted by the Real Estate and Construction Department of the City; or,
 - b) The most recent land sale record of the relevant property, no more than 24 months prior to the date the application reviewed and accepted by the Real Estate and Construction Department of the City; 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.

20. 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 as applicable);
 - b) The day before provisional consent to sever is given for a consent application;
 - c) The day before approval of the draft plan of subdivision; or,
 - d) The land sale record date accepted by the City, as per section 19. b).

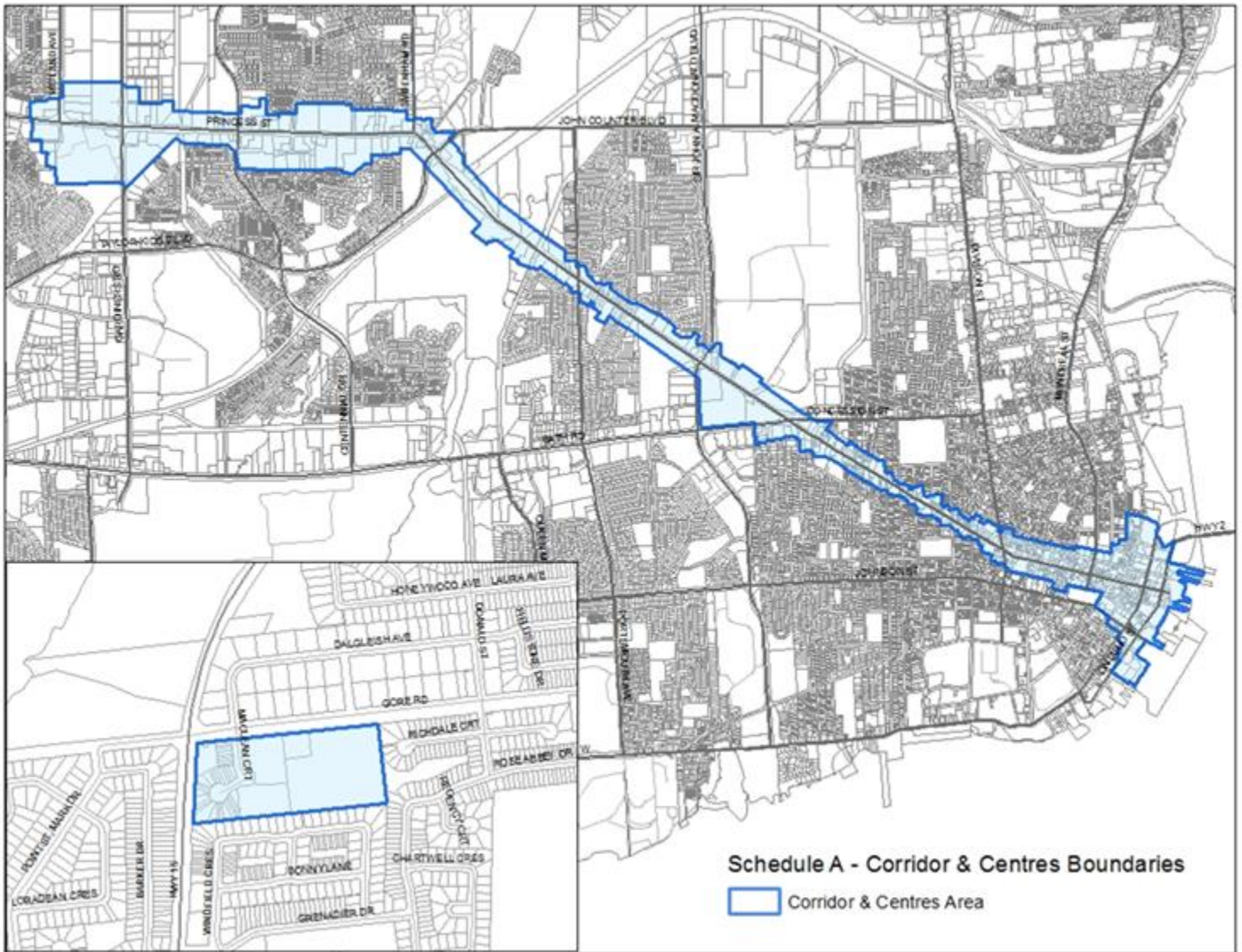
(By-Law 2013-107; By-Law 2014-145; 2016-44)

Part V - Administration

21. This By-Law shall be administered by the Director of Recreation and Leisure Services or Designate.
22. City Council may, by resolution, vary any of the requirements for Parkland dedication or payment in lieu thereof set out in this By-Law.
23. No building permit shall be issued until all Parkland dedication requirements have been satisfied as established in this By-Law.
24. Any legal or administrative costs associated with the conveyance of land shall be the responsibility of the transferor.
25. In the event of a dispute between the City and an owner of land on the determined amount of land and/or the value of land, either party may apply to the Ontario Municipal Board to have the value determined and the Board shall make a final determination of the matter, in accordance with the Planning Act.
26. 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.
27. This By-Law may be reviewed by the City every 3 years to ensure its ongoing validity in the evolving Development context within the City.
28. City of Kingston By-Law 8820, Township of Kingston By-Law 83-2 and Township of Pittsburgh By-Law 14-88 are hereby repealed.
29. Notwithstanding Section 28 above, City of Kingston By-Law 8820, Township of Kingston By-Law 83-2 and Township of Pittsburgh By-Law 14-88 may apply to site plan, consent and subdivision applications that were submitted and deemed complete to the satisfaction of the City prior to the repeal of said By-Laws. This provision shall be implemented in circumstances when the burden to Development under By-Laws 8820, 83-2 and 14-88 is less than that of this By-Law.
30. This By-Law shall come into force and take effect on the date of its passing.

(By-Law 2013-107; By-Law 2014-145; 2016-44)

Schedule "A"



Schedule "B"

