

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: June 27, 2024

CASE NO.: OLT-22-004663

PROCEEDING COMMENCED UNDER subsection 42(4.9) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellants (jointly): Baif Developments Limited, The Acorn Development Corporation, Acorn Major Mack Inc. and Woodcreek Development Corporation

Appellants (jointly): Metroview Developments (Harding) Inc., Metroview Developments (Elmwood) Inc. and Metroview Developments (Garden) Inc.

Appellant: Oxford Properties Group

Appellant: Building Industry and Land Development Association

Appellant: North Elgin Centre Inc.

Subject: Parkland Dedication By-law No. 123-22

Municipality: City of Richmond Hill

OLT Case No.: OLT-22-004663

OLT Lead Case No.: OLT-22-004663

OLT Case Name: Acorn Major Mack Inc. v. Richmond Hill (City)

BEFORE:

SHARYN VINCENT
VICE-CHAIR

)

Thursday, the 27th day of

)

MICHAEL MENEZES
MEMBER

)

June, 2024

THIS MATTER having come before the Tribunal for a hearing on June 25, 2024 and upon receiving and reviewing the evidence of Michelle Dobbie sworn and dated June 13th, 2024, together with hearing *viva voce* sworn evidence from the affiant, so qualified to

assist the Tribunal with opinion evidence in the areas of parks planning and matters of natural heritage:

AND WHEREAS THE TRIBUNAL is satisfied that the revisions to By-law 123-22 agreed to by all Parties and other than those stylistic revisions which bring greater clarity to the By-law, give effect to the amendments to the *Planning Act*, R.S.O. 1990, c. P. 13, as amended by Bill 23, *The More Homes Built Faster Act, 2022* authorizing additional exemptions for not for profit, ancillary units, and additional secondary units, as defined; a requirement to convey 1 hectare of land for each 600 net Dwelling Units, as defined; a requirement of a payment in lieu of conveyance as a payment calculated using a rate of 1 hectare of land for every 1,000 net Dwelling Units; the time at which the valuation is to be determined; and the legislative caps on alternative rates.

THE TRIBUNAL having reviewed the final form of the City of Richmond Hill Parkland Dedication By-law 123-22, attached hereto as Schedule “A”;

THE TRIBUNAL ORDERS that the appeal is allowed in part and By-law 123-22 attached hereto as Schedule “A” is hereby approved.

“Euken Lui”

EUKEN LUI
ACTING REGISTRAR

Ontario Land Tribunal

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The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

SCHEDULE "A"

The Corporation of the City of Richmond Hill

By-Law 123-22

A By-Law to require the conveyance of land and payment of cash-in-lieu thereof for park or other public recreational purposes as a condition of development or redevelopment and to repeal By-law 58-13, including all amendments thereto

Whereas section 42 of the *Planning Act* provides that the Council of a local municipality may by by-law require that land and payment of cash-in-lieu thereof be conveyed to the municipality for park or other public recreational purposes as a condition of development or redevelopment of land;

And Whereas the City of Richmond Hill has an Official Plan in effect that contains specific policies dealing with the provision of lands for park or other public recreational purposes and the use of the alternative requirement authorized under section 42(3) of the *Planning Act*, R.S.O. 1990, c. P.13 as amended;

And Whereas the Council of the Corporation of the City of Richmond Hill deems it necessary and expedient to enact a by-law to provide for the conveyance of land and payment in lieu thereof for park or other public recreational purposes and the use of alternative requirements as set out in this by-law;

Now Therefore The Council Of The Corporation Of The City Of Richmond Hill Enacts As Follows:

Definitions

1. In this By-law,

"City" means The Corporation of the City of Richmond Hill or the geographical jurisdiction of The Corporation of the City of Richmond Hill, as the context requires;

"Commercial or Industrial Uses" means the use of land, structure or building for all uses except Residential Use, Institutional Use, and Special Residential Uses;

"Dwelling Unit" means any property that is used or designed for use as a domestic establishment in which one or more persons may sleep and prepare and serve meals;

"Institutional Use" means the use of land, structure, or building:

- i. for religious, charitable, educational, benevolent, health or welfare purposes by a not for profit or gain organization, group or association;
- ii. by or on behalf of any municipality, Housing York Inc. (or any successor corporation of the Regional Municipality of York), the Government of Ontario,

the Government of Canada or any local board, as such term is defined in the Municipal Affairs Act, R.S.O. 1990, c. M.46, as amended, but does not include any corporation owned in whole or in part by any municipality (save and except for Housing York Inc. or any successor corporation of the Regional Municipality of York), the Government of Ontario or the Government of Canada; or

- iii. Development of a building or structure intended for use as a residential premises and developed by,
 - a. a corporation to which the Not-for-Profit Corporations Act, 2010 applies, that is in good standing under that Act and whose primary object is to provide housing;
 - b. a corporation without share capital to which the Canada Not-for-profit Corporations Act applies, that is in good standing under that Act and whose primary object is to provide housing, or
 - c. a non-profit housing co-operative that is in good standing under the Co-operative Corporations Act.

“Multi-Residential Building” means a building used in whole or in part for Residential Use consisting of more than one (1) Dwelling Unit, but does not include a Semi-Detached Building or Townhouse. For greater clarity, a Multi-Residential Building includes a Stacked Townhouse;

“Planning Act” means the *Planning Act, R.S.O. 1990, c. P.13, as amended, or any successor thereof*;

“Residential Use” means the use of land, structure or building for human habitation, but does not include Special Residential Uses;

“Special Residential Uses” means rooming houses, group homes, nursing homes, and homes for the aged, all of which do not contain more than one Dwelling Unit;

“Semi-Detached Building” means a building divided vertically into and comprising two (2) Dwelling Units each of which is separated vertically from the other by a party wall and having a separate entrance to grade;

“Single Detached Building” means a residential building consisting of one (1) Dwelling Unit that is not attached to another building or structure;

“Stacked Townhouse” means a building containing at least three (3) Dwelling Units, each Dwelling Unit being separated from the other vertically and horizontally and having an independent external access;

“Strata Park” means City-owned parkland to which the public has access notwithstanding that it is located on a building or structure that is not owned by the City,

including but not limited to a parking garage. The strata component of this definition refers to the horizontal delineation of legal ownership as described in the *Condominium Act*, 1998, SO 1998, c 19.

“Townhouse” means a building consisting of at least three (3) Dwelling Units, which are either separated vertically from the other by a party wall and having a separate entrance to grade or separated from the other vertically and/or horizontally and having an independent external access. For clarity, this definition includes back to back townhouses, block townhouses, rear lane townhouses and street townhouses. For greater clarity, a Townhouse does not include a Stacked Townhouse.

Lands Affected

2. This By-law applies to all land within the corporate limits of the City.

Where By-law Not Apply

3. The provisions of this By-law do not apply to:
 - a. development or redevelopment where the proposed use of the land is for Special Residential Uses or for Institutional Uses; or
 - b. the erection or location of:
 - i. a second Dwelling Unit in a Single Detached Building, Semi-Detached Building, or Townhouse on a parcel of land on which a Residential Use, other than an ancillary residential use, is permitted, if all buildings and structures ancillary to the Single Detached Building, Semi-Detached Building, or Townhouse cumulatively contain no more than one Dwelling Unit;
 - ii. a third Dwelling Unit in a Single Detached Building, Semi-Detached Building, or Townhouse on a parcel of land on which a Residential Use, other than an ancillary residential use, is permitted, if no building or structure ancillary to the Single Detached Building, Semi-Detached Building, or Townhouse contains any Dwelling Units; or
 - iii. one Dwelling Unit in a building or structure ancillary to Single Detached Building, Semi-Detached Building, or Townhouse on a parcel of land on which a Residential Use, other than an ancillary residential use, is permitted, if the Single Detached Building, Semi-Detached Building, or Townhouse contains no more than two Dwelling Units and no other building or structure ancillary to the Single Detached Building, Semi-Detached Building, or Townhouse contains any Dwelling Units.

General Requirement

4. As a condition of the development or redevelopment of land, the owner of the land shall convey to the City for park or other public recreational purposes:

- a. Two (2) percent of land proposed for development or redevelopment for Commercial or Industrial Uses; or
 - b. In the case of land proposed for development or redevelopment for Residential Use, the greater of:
 - i. 5 per cent of the land proposed for development or redevelopment; or
 - ii. 1 hectare of land for each 600 net Dwelling Units proposed for development or redevelopment.
5. Conveyance of environmental and open space lands including lands required for drainage, stormwater management facilities, shoreline protection purposes, lands susceptible to flooding, lands within valley and watercourse corridors, hazard lands, environmentally sensitive areas or lands, areas of natural and scientific interest, wetlands, woodlands, that portion of a property containing a cultural landscape that is designated to be of cultural value or interest pursuant to Part IV of the *Ontario Heritage Act* lands required for buffer purposes and other lands not suitable for development, shall not be accepted or considered as a conveyance of lands for a park or for other public recreational purposes pursuant to the requirements set forth in section 4 of this By-law.

Mixed Use Developments

6. In the case of land proposed for development or redevelopment for more than one purpose, the owner shall be required to convey land at the rate applicable to the predominant proposed use of the land and all of the land proposed for development or redevelopment shall be included for the purpose of calculating the amount of land required to be conveyed.

Reductions for Redevelopment of Lands

7. Where land has been conveyed to the City for park or other public recreational purposes or a payment in lieu of such conveyance has been received by the City or is owing to it under section 42 of the *Planning Act* or a condition imposed under section 51.1 or 53 of the *Planning Act*, no additional conveyance or payment in respect of the land subject to the earlier conveyance or payment shall be required under this By-law in respect of subsequent development or redevelopment unless:
- a. there is a change in the proposed development or redevelopment which would increase the density of development; or
 - b. land originally proposed for development or redevelopment for Commercial or Industrial Uses is now proposed for development or redevelopment for Residential Use;

This section does not apply to land proposed for development or redevelopment if, before March 28, 1995 (the date subsection 42(8) of the *Planning Act* came into force), the land was subject to a condition that land be conveyed to the City for park

or other public purposes or that a payment of money in lieu of such conveyance be made under section 42 or under section 51 or 53 of the *Planning Act*.

8. If there is a change under section 7 (a) or (b) of this By-law, the land that has been conveyed or is required to be conveyed or the payment that has been received or that is owing, as the case may be, shall be included in determining the amount of land or payment of money that may subsequently be required under this By-law with respect to the development, further development or redevelopment of the lands or part of them in respect of which the original conveyance or payment was made.

Parkland Credits

9. A Strata Park that is conveyed to the City, which conveyance shall be to the satisfaction of the Commissioner of Planning and Infrastructure in the Commissioner's sole and absolute discretion, may be considered as contributing toward the parkland dedication requirements set out in sections 4 and 10 of this By-law. The value of the parkland credit given for a conveyed Strata Park shall be 80% of the value of the land required for parkland as this takes into account the inherent use limitations of Strata Parks. Nothing in this By-law shall obligate the City to accept conveyance of a Strata Park or to attribute any value for accessing the Strata Park over non City-owned lands.

Payment Instead of Conveyance

10. In lieu of the conveyance of land under this By-law, the City may require the payment of money to the value of the land otherwise required to be conveyed under this By-law, or a combination of land and money. Where payment of money in lieu of land is required, the required payment shall be calculated using a rate of 1 hectare of land for every 1,000 net Dwelling Units proposed.
11. For the purpose of section 10 of this By-law, the value of the land shall be calculated by determining the applicable valuation date in accordance with section 12, and where that date is within a period identified in Column 1 of Table 1 below, by multiplying the corresponding per-unit amounts set out in Columns 2, 3, and 4 by the number of net Dwelling Units proposed of each unit type.
12. a. The applicable valuation date for the purposes of Column 1 of Table 1 shall be:
 - i. The day a complete application for an approval of development in a site plan control area under section 41(4) of the Planning Act is submitted in respect of the development or redevelopment;
 - ii. If section 12(a)(i) does not apply, the day a complete application for an amendment to a by-law passed under section 34 of the Planning Act is submitted in respect of the development or redevelopment; or
 - iii. If neither section 12(a)(i) nor 12(a)(ii) applies, the day a building permit was issued in respect of the development or redevelopment or, if more than one building permit is required for the development or redevelopment, the day the first permit was issued.

If a development is the subject of more than one application referred to in sections 12(a)(i) and 12(a)(ii), the later one is deemed to be the applicable application for purposes of determining the amount of a payment in lieu of land.

b. Sections 12(a)(i) and 12(a)(ii) do not apply if, on the date the first building permit is issued for the development or redevelopment, more than two years have elapsed since the application referred to in sections 12(a)(i) or 12(a)(ii) was approved.

c. Sections 12(a)(i) and 12(a)(ii) do not apply to complete applications submitted prior to November 28, 2022. Section 12(a)(iii) will instead apply.

Table 1 – Land Value According to Dwelling Unit Type

Column 1 Period	Column 2 Per Dwelling Unit in a Multi- Residential Building	Column 3 Per Dwelling Unit in a Townhouse	Column 4 Per Dwelling Unit in a Single Detached Building or Semi- Detached Building
September 13, 2022 through to December 31, 2022	\$10,000	\$11,500	\$11,875
January 1, 2023 through to December 31, 2031	\$23,400	\$15,000	\$19,792

Legislative Caps on Alternative Rates

13. Where land is conveyed at the rate of 1 hectare for each 600 net Dwelling Units pursuant to section 4(b)(ii), or where a payment of money in lieu of land is given at the rate of 1 hectare for each 1,000 net Dwelling Units pursuant to section 10, the maximum amount of land or payment in lieu shall be:

- a. In the case of land proposed for development or redevelopment that is five hectares or less in area, 10% of the land area or 10% of the value of the land calculated pursuant to section 11 and Table 1, as the case may be; and
- b. In the case of land proposed for development or redevelopment that is greater than five hectares in area, 15% of the land area or 15% of the value of the land calculated pursuant to section 11 and Table 1, as the case may be.

14. For the purposes of sections 4, 10, and 13, the net Dwelling Units proposed shall be determined by subtracting the number of residential units on the land immediately before the proposed development or redevelopment from the number of residential units that will be on the land after the proposed development or redevelopment.

15. All payments of money in lieu of the conveyance of land shall be made prior to the issuance of a building permit for the land to be developed or redeveloped.

16. Notwithstanding sections 10-15, this By-law shall not limit or preclude the right of an owner to pay the amount calculated by the City under protest and to apply to the Tribunal to have the value of land determined in accordance with the *Planning Act*.

Administration of By-law

17. The Commissioner of Planning and Infrastructure is hereby authorized to:
 - a. determine whether to require the dedication of land, the payment of money or a combination of land and money on behalf of the City as set out into Section 10 of the By-law;
 - b. to establish the location and configuration of land required to be conveyed; and
 - c. establish procedures for calculating reductions applicable pursuant to Sections 7 and 8 of this By-law.
18. The Commissioner of Corporate and Financial Services is hereby authorized to establish the value of land for the purpose of calculating any required payment pursuant to this By-law.
19. The decisions pursuant to Sections 17 and 18 must not be contrary to or inconsistent with any resolution of Council passed at any time prior to the issuance of a building permit.

General

20. Should any section or part of a section of this By-law be determined by a court or tribunal of competent jurisdiction to be invalid or of no force and effect, that section or part shall be severable and the remainder of this By-law will continue to operate in full force and effect.
21. The reference to any statute, regulation or by-law shall be deemed to refer to the statute, regulation or by-law as they may be amended from time to time.

Effective Date

22. This By-law comes into force and By-law 58-13, as amended is repealed at 12:01am on September 13, 2022.

Passed this 13th day of September, 2022.

David West
Mayor

Stephen M.A. Huycke
City Clerk