



Subject: Bridges Subdivision Parkland Dedication

Report Number: RCP 23-33

Department: Recreation, Culture and Parks Department

Submitted by: Julie Columbus, Director

Meeting Type: Council Meeting

Meeting Date: Monday, July 17, 2023

RECOMMENDATION

- A. THAT report titled RCP-23-33 Bridges Subdivision Parkland Dedication be received as information; and
- B. THAT expenses incurred by the developer to relocate the Toboggan Hill not be considered as part of the overall cash in lieu of parkland dedication requirement; and
- C. THAT the existing lease agreement between the Town and 2407774 Ontario Limited, to operate the Toboggan Hill, be terminated and a new lease agreement for the proposed toboggan hill location not be executed due to liability concerns.

BACKGROUND

At the June 26th, 2023 Council meeting, Kirby Heckford and Pat Carroll made a delegation to Council for consideration of alternate options for the required 5% cash in lieu of parkland dedication required as part of the Bridges Subdivision development.

During their presentation they shared information related to costs associated with the relocation of the Toboggan Hill and suggested that the expense incurred by the developers be considered as a portion of the required cash in lieu.

Council, at the meeting held on June 26th, adopted the following:

*THAT Council receives the delegation from Kirby Heckford as information;
And*

THAT Council defers this decision until a staff report in regards to options available to include for park land dedication, options for safety, and review of the town's insurance be made available regarding the sledding hill located at 101 John Pound Road.

DISCUSSION

The requirement for parkland dedication is contained within Section 50 (1) (25) of the *Planning Act*, which provides:

Conditions

(25) The approval authority may impose such conditions to the approval of a plan of subdivision as in the opinion of the approval authority are reasonable, having regard to the nature of the development proposed for the subdivision, including a requirement,

(a) that land be dedicated or other requirements met for park or other public recreational purposes under section 51.1;

The parkland dedication requirements are contained within Section 51.1 of the *Planning Act*:

Land conveyed or dedicated for parkland

(1) The approval authority may impose as a condition to the approval of a plan of subdivision that land in an amount not exceeding, in the case of a subdivision proposed for commercial or industrial purposes, 2 per cent and in all other cases 5 per cent of the land included in the plan shall be conveyed to the local municipality for park or other public recreational purposes or, if the land is not in a municipality, shall be dedicated for park or other public recreational purposes.

Payment in lieu

(3) If the approval authority has imposed a condition under subsection (1) requiring land to be conveyed to the municipality and subsection (2) does not apply, the municipality may require a payment in lieu, to the value of the land otherwise required to be conveyed. 2015, c. 26, s. 32 (2).

Determination of value

(4) For the purpose of determining the amount of any payment required under subsection (3) or (3.1), the value of the land shall be determined as of the day before the day of the approval of the draft plan of subdivision. 1994, c. 23, s. 31; 2015, c. 26, s. 32 (3).

These sections of the *Planning Act* allow the municipality to attach conditions requiring parkland dedication as part of a plan of subdivision, and they give the municipality the discretion to accept the dedication in the form of 5% of the land, or a cash-in-lieu payment of 5% of the value of the land. The legislation indicates that the value is to be determined as of the date before the draft approval of the plan of subdivision.

Application Background:

The applications for Official Plan Amendment, Draft Plan of Subdivision Approval, and zone change were originally submitted on February 10, 2020 and were circulated for agency comments. Upon review, the following comments were provided by the Town's Director of Recreation, Culture and Parks:

1. One (1) tree per residential lot.
2. The Town will agree to review the Insurance Agreement for the continued use of the "Toboggan Hill" used by the public.
3. The Town will request Cash-in-lieu of Parkland for this development.

The cash-in-lieu of parkland was chosen in this instance as the lands are already surrounded by private greenspace and a public park in the confines of a private golf course development was not considered desirable as public access could be problematic. It was also noted that no new park facilities were being provided in the proposed plan of subdivision- the toboggan hill already existed and no new park facilities were proposed.

The applications were subsequently amended on September 2, 2021 to include an additional 3.13 ac of ravine lands that were purchased from the Town of Tillsonburg that were added to the subdivision proposal, as part of the residential lots on Eagle's Nest. These lands fronted on the western portion of Borden Crescent, which is an unopened road allowance. Town Council approved the sale of these lands to the applicant, and they were transferred to the applicant for consideration in the amount of \$24,000.

The subdivision was recommended for approval by Town Council on November 1, 2021, and was approved by Oxford County Council on November 10, 2021. The conditions of draft approval included condition #3:

The subdivision agreement shall make provision for the payment of cash-in lieu parkland thereof in accordance with the relevant provisions of the Planning Act, to the satisfaction of the Town of Tillsonburg.

Cash In Lieu of Appraisal

Town staff obtained an appraisal (Metrix Appraisal) to determine the value of the subject lands, as of November 9, 2021, the date prior to draft approval as stipulated by Section 51.1 (3) of the Planning Act. The appraisal, (completed by an Accredited Member of the Appraisal Institute of Canada) determined the value of the subject property (consisting of the 30 acres within the draft plan of subdivision) to be \$5,400,000 (\$180,000 per ac). The applicable cash-in-lieu of parkland payment is 5% of the value, or \$270,000. The appraisal was provided to the applicant for their review.

The applicant indicated they disagreed with the valuation of the Town appraisal. In the event that the applicant does not agree with the appraisal procured by the Town, they can obtain their own appraisal to determine if the original appraisal is reasonable.

The appraisal (Valco Appraisal) provided by the applicant valued the subject property at \$3,200,000 - significantly less than the Town's appraisal but the difference can be attributed to the land included in the appraisal. The Valco appraisal only included 19.12 acres that excluded the ravine lands, lands within the Long Point Region Conservation Authority Limit and the stormwater management pond. The reasoning provided for this is that the lands are not developable and did not provide additional value to the subdivision. Staff have a number of concerns with this approach:

- The Planning Act requires that the parkland dedication be 5% of the total area of the subdivision - this includes all lands - developable lands, ravine lands, stormwater management lands as they are all required to facilitate the development of the subdivision. Case law from the Ontario Land Tribunal confirms this approach.
- The ravine areas adjacent to Borden Crescent were purchased by the applicant from the Town to provide additional depth for the abutting residential lots, presumably to increase the value of these lands and as such need to be included in the appraisal to determine the value of the subdivision development;
- Lands regulated by the LPRCA are not automatically precluded from development; at times development can still occur within LPRCA regulated areas subject to the issuance of LPRCA permits;
- The proposed methodology of excluding ravine lands, undevelopable areas and the stormwater management pond would be a significant departure from past practice of determining the applicable cash in lieu of parkland for previous subdivision developments.

Staff are of the opinion that the appraised value of the Metrix Appraisal (\$180,000 per ac) is reasonable given that the appraised value of the Valco appraisal is similar, if divided by only the developable area that was included in the assumptions (\$167,364 per ac).

Staff remain of the opinion that the appraisal needs to include the entirety of the plan of subdivision, as per the language of the Planning Act, as confirmed by OLT decisions, and as per past Town practice.

Toboggan Hill

With respect to the Toboggan Hill, staff are of the opinion that it would be inappropriate to include the toboggan hill as part of the cash in lieu of parkland contribution for the following reasons:

- There are no 'new' recreational facilities being provided through the plan of subdivision - the toboggan hill was an existing amenity that was present prior to

the subdivision development. The intent of the parkland dedication provisions within the Planning Act is to ensure additional land or monies are provided to satisfy the recreational needs of the additional residential dwelling units being created. No additional recreational amenities are being provided.

- The toboggan hill is privately owned. Typically the parkland dedication transfers lands to the Town for public ownership or provides funds to provide or enhance recreational amenities on other Town-owned lands. The long-term use of the lands for a toboggan hill is not secured and the Town could lose the toboggan hill even after considering it parkland and crediting it towards the cash in lieu payment.
- The toboggan hill is a seasonal amenity and the public park space that the Town would give credit for would not be available for most of the year.
- The toboggan hill is not AODA compliant.
- Liability issues

Staff also note that there are no conditions of draft approval that required the toboggan hill to continue and be preserved through the subdivision design. The modifications to the toboggan hill were required due to the design of the stormwater management pond that is necessary to facilitate the proposed residential development. (see attachment) As such, the proposed \$95,000 cost as noted by the developer in his delegation to Council justifying the relocating of the toboggan hill was a necessary expense to ensure the operations of the new subdivision.

Liability

Staff consulted with the Town's Insurance Company and did a site meeting to complete a risk assessment of the new proposed location of the Toboggan Hill. A formal review will be submitted to the Town in the next couple of weeks. The following preliminary response was provided to the Town from the Intact Risk Analyst.

"There are definitely some concerns with utilizing this area as a toboggan hill. We believe the very nature of the area would make it difficult to de-risk and as a result could expose the Town to liability.

As a preliminary assessment we offer the following concerns:

- *The slope descends directly towards the stormwater pond. Safe toboggan hills should always "bottom-out" onto an adequate and safe open area.*
- *Children could use other areas on the property as a toboggan hill that are not designated as the hill and potentially injure themselves*

- *Fencing around a stormwater pond is not required however, it is recommended as the hill will attract the public to the area. (Mr Carroll confirmed there were plans to have a snow fence at the bottom of the toboggan hill)*
- *Attracting children to the area might also encourage the use of the stormwater pond as an ice rink.*

Staff also have noted concerns with the proposed location of the toboggan hill (see attachment) and the increased liability with the new stormwater management pond at the base. Staff would not recommend extending the existing agreement between Bridges and the Town, with the Town assuming liability of the toboggan hill until the risk assessment has been formalized and correspondence received from the insurance company regarding operation and design.

CONSULTATION

This report has been prepared in consultation with the Recreation, Culture and Parks Department, the Director of Operations, the Clerk's Department and Intact Insurance staff.

FINANCIAL IMPACT/FUNDING SOURCE

The financial impact will be dependent on Council's decision whether to honour expenses paid by the developer (\$95,000 per June 26 Council delegation correspondence) to relocate the Toboggan Hill as it will decrease the 5% cash in lieu payment required as part of the subdivision agreement. Funds paid to the Town by developers is contributed to the Parkland Trust which assists with funding future parks projects and expenses associated with the playground replacement program.

Insurance for the new proposed location may increase with the noted risk concerns pertaining to the location of the hill and the Storm Management Pond.

Under the current lease agreement the Town pays \$4,000 annually to lease the toboggan hill for four months each year. These costs are included in the RCP operating budget.

CORPORATE GOALS

How does this report support the corporate goals identified in the Community Strategic Plan?

- Lifestyle and amenities
- Customer service, communication and engagement

- Business attraction, retention and expansion
- Community growth
- Connectivity and transportation
- Not Applicable

Does this report relate to a specific strategic direction or project identified in the Community Strategic Plan? Please indicate section number and/or any priority projects identified in the plan.

Goal – Within the community, Tillsonburg will strive to offer residents the amenities, services and attractions they require to enjoy balanced lifestyles.

Strategic Direction – Provide an expanded, accessible network of parks and trails; Increase opportunities to enjoy culture, events and leisure activities in Tillsonburg; Maintain and enhance programs and facilities to support an active, engaged youth population.

Priority Project – Ongoing Projects: New playgrounds construction.

ATTACHMENTS

CJDL – landscaping schematic of toboggan hill and stormwater pond
Photo of site – toboggan hill