5% PARKLAND OR CASH IN LIEU — A NEW POKER GAME

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As a result of provisions in the Planning Act, 1983, municipalities are re-thinking their strategy on taking cash in lieu of parkland.

Introduction

MUNICIPALITIES AND subdividers have had, over the years, an ongoing poker game on the subject of 5% parkland - or cash in lieu. Generally speaking, it has been a game of "dealer's choice", the dealer being the municipality![2]

In previous years when the dealer called the 5% parkland game, the issue was the location of the park lot and the basic grading standards. If the dealer called the game of "cash in lieu", it was a question of how much money would be thrown into the poker pot.

Since the introduction of the new *Planning Act* (August 1, 1983), municipalities are having second thoughts about their strategy before they call the game. The 5% parkland dedication has not changed but the "cash in lieu" game has.

Let us look at some of the old familiar guidelines we used in the past and then consider the new options. In an attempt to illustrate these comparisons, let us assume the following:

(a) a 25-lot subdivision with full services (no hazard land, no conversion area);
(b) assume a "raw land" cost per lot of $8,000.00;
(c) assume a servicing cost per lot of $10,000.00;
(d) assume a market sale price per lot of $25,000.00.

Cash in Lieu - Old Planning Act

Under the old *Planning Act* when municipalities called the game of "cash in lieu", it was just a case of how much! Each side bluffed their hand to the limit. In general, the 5% cash was determined in one of three ways:

First — 5% of the value of the subdivision land, after it had been developed.

Since this takes place after the installation of hard services i.e. roads, sewers, water, etc., the land has a very high value. This obviously results in the highest value to the municipality and is the most expensive to the subdivider.

Illustration:

(a) Total value of fully developed subdivision – ($25,000.00 x 25)	$625,000.00
(b) 5% parkland – ($625,000.00 x 5%)	$ 31,250.00

Secondly — 5% of the value of the subdivision land, after it was developed and readied for sale, but reducing this value by the cost of installing hard services.

This was the "middle of the road" approach to a cash in lieu valuation and was used by a number of municipalities and subdividers.

Illustration:

(a) Total value of fully-developed subdivision	$625,000.00
(b) Less cost of servicing	$250,000.00
(c) Result:	$375,000.00
(d) 5% parkland ($375,000.00)	$ 17,750.00

Thirdly — 5% of the value of the "raw" land.

Illustration:

(a) 5% of raw land value — ($200,000.00 x 5%)	$ 10,000.00

While it is true that there are O.M.B. decisions on the subject[3], no clear cut rules were established for determining values. Hence, the poker game.

The New Planning Act — Subdivisions Subsection 50(9)

Under the new Act when a municipality calls the game of "cash in lieu" on a subdivision plan, it does not have the wild cards (valuation options) it had previously.

Subsection 50(9) of the Act states that the value of the property shall be determined:

"as of the day before the day of draft approval of the plan."

This is the "raw land" game. It is a well-known fact that raw land about triples in value on receiving draft approval and increases substantially more with the appropriate zoning and the construction of the hard services. This new provision of calculating the value as of the day before approval, is the least attractive to the municipality but a breath of fresh air to the subdivider.

The New Planning Act — Development Subsection 41(6)

In the case of developments (not a subdivision), cash in lieu is determined:

"as of the day before the day of the issuance of the building permit in respect of the development."

Since development or redevelopment involves a much smaller parcel of land, rarely does the municipality take land for park purposes, but instead takes cash in lieu. The problem is, what is the value of the land on the day before the application for the building permit? (Note: it says "land" not "lands and buildings". I am not sure of the significance of this.) You have to stop and think about this one.[4] Obviously "pre-permit" values will assume that the Official Plan and Zoning By-law procedures have been completed. This results in substantially higher land values than "raw land" values on subdivision applications. There are certain to be valuation disputes over this and by subsection 42(1), these can be settled by the Land Compensation Board - which is now the Ontario Municipal Board.

New Strategy

As a result of this legislation, some municipalities are changing their strategy when it comes to subdivisions.

It is now more logical for them to ask for a "parkland dedication". A 5% area of land, with full services surrounding it, will indeed fetch a handsome purchase price on the market if sold in future years.

Some municipalities have even telegraphed their future intentions. They require that the subdivider divide the parkland area into lots and convey them to the municipality for parkland purposes. Obviously they do not intend to keep these lots as parkland. Under subsection 50(10), the land can be sold at any time.

For some municipalities who have forecasted in their budgets revenues from subdivisions, this new formula for cash in lieu comes at an inopportune time. There is a trend in Ontario for municipalities to build parkland cash reserves for the construction of community public recreational complexes, i.e. swimming pools, basketball courts and arena. These budgets may have to be scaled down.

It will be interesting to watch how subdividers react to the new strategy of municipalities who elect to take parkland in lieu of cash in anticipation of subsequently selling the land. Subdividers are an ingenious lot and they are not going to be enthusiastic about dedicating 5% of their most valuable land when the alternative of cash in lieu under the legislation is more attractive.

Obviously this will become an issue before the O.M.B. Here it may have some technical difficulties (jurisdictional)[5], but this should make the exercise more interesting. Can you not just see subdividers cross-examining municipalities about their parkland policies? If these policies do not project a park in the subdivision area, will they argue that the municipality should be taking cash in lieu of parkland?

So the rules of the poker game are changing. it is a case of "wait and see" as to how the parties play their cards. An Easterner who walked into a western saloon was amazed to see a dog sitting at a table playing poker with three men. "Can that dog really read cards?" "Yeah, but he ain't much of a player", said one of the men. "Whenever he gets a good hand, he wags his tail."

1. See Municipal World, Volume 81, April 1981 for a previous article by the author on this subject.
2. Under the old Act, R.S.O. 1980, Chapter 379, s. 36, ss 8, the Minister (or Region) could authorize a municipality to take cash in lieu and in many instances did so. Under subsection 50(8) of the new Act, the municipality has the option to take parkland or cash in lieu.
3. Emmitt Developments Ltd. vs. City of Brampton, 1980, O.M.B.R., 276 Re Sandwich South Planning Area Official Plan Amendment No. 9, 1979, 10 O.M.B.R., 229.
4. My thanks to Earl Newhall, Senior Planner for the City of Orillia for drawing this to my attention.
5. 314164 Ontario Limited vs. The City of Sudbury (May, 1982), 36 O.R. (2d), 592 (S.C.), Court of Appeal, 43 O.R. (2d), 225, (sometimes referred to as the Futuristic Developments case). •