

**TOWN OF FORT FRANCES**

**BY-LAW NO. 8/98-YY**



(Being a By-Law to amend Zoning By-Law #8/98, as amended – Lillie Avenue at Elizabeth St. W.)

**WHEREAS** Temporary Use By-Law 8/98-NN was enacted on August 23, 2010 to permit the development of a community garden on municipally owned lands fronting Lillie Avenue at Elizabeth Street West for a three year period to August 23, 2013;

**AND WHEREAS** a request has been received from the Fort Frances Community Garden Group to have the zoning changed to permit the proposed use on a permanent basis, together with, the site-specific provisions, a reduction in the front yard setback and to permit an accessory building on the property without a principal building.

**AND WHEREAS** in accordance with The Planning Act a Public Meeting was held on Monday, July 8, 2013 to consider the subject Zoning By-Law Amendment, proper notice of which was given in accordance with the requirements of Ontario Regulation 199/96;

**AND WHEREAS** Council, at its meeting held July 22, 2013 approved the report of the Municipal Planner and a recommendation supported by the Planning and Development Executive Committee that the property be rezoned to accommodate the proposed use with site-specific provisions as per the application;

**NOW THEREFORE** the Council of the Corporation of the Town of Fort Frances **HEREBY ENACTS** as follows:

1. That Town of Fort Frances Zoning By-Law #8/98, as amended, be further amended by

- a. adding the following to Section 4.2.3:

4.2.3.3. – Site Specific Provision - Part of Block K, SM-140

Notwithstanding any of the provisions of By-Law No. 8/98 and Schedule "A" (Zoning map) thereto, in addition to the permitted uses and regulations of the "Residential Type Two (R2) Zone" and other applicable provisions, the following are site-specific and shall apply to the lands above described and more particularly shown on Schedule "A" on page 2 hereof attached and forming part of this By-Law:

- a *community garden*, is a permitted use;
- the front yard setback is reduced from 7.5 metres to 3.657 metres; and
- an accessory structure is permitted without the requirement for a principal use building, structure or use being in existence on the lot.

- b. Adding the following definition to Section 5:

A *community garden* shall mean "a tract of land gardened on a communal basis for the sole use of or consumption by the individuals caring for the garden".

2. That Schedule "B" attached to and forming a part of this by-law, being a Full and Final Release, shall be signed by or on behalf of all individuals participating with or going on the site of the community garden.

3. That this By-Law shall come into force and take effect upon the final passing thereof as provided in The Planning Act c. 13, R.S.O. 1990, as amended, and thereupon shall be effective from the date of its passing.

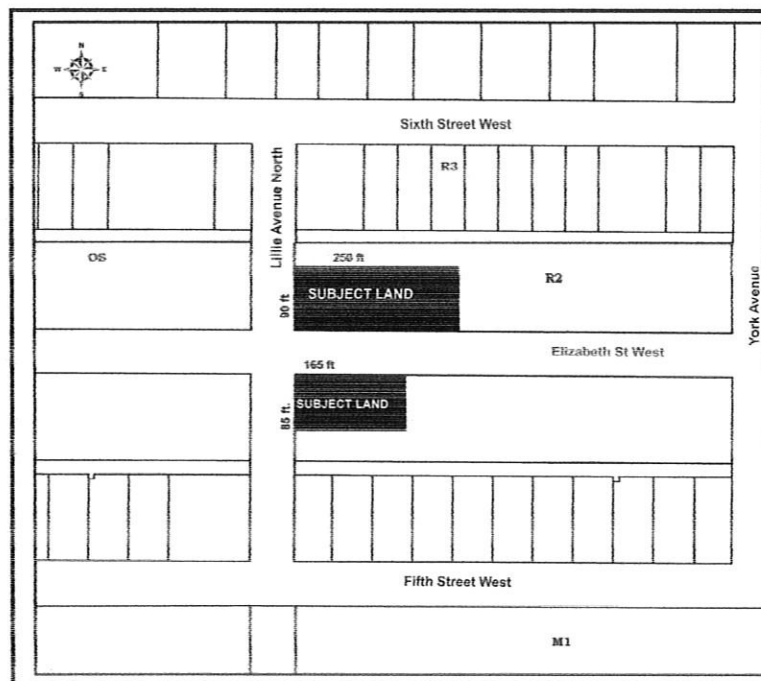
READ THREE TIMES and finally passed in open Council this 22<sup>nd</sup> day of July 2013.

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CLERK

This is Schedule "A" to By-Law 8/98-YY attached to and forming a part of said By-Law read three times and passed by Council for the Town of Fort Frances on the 22<sup>nd</sup> day of July 2013.

**MAP OF SUBJECT LAND:**



FULL AND FINAL RELEASE AND INDEMNITY

WHEREAS

- A. \_\_\_\_\_, the undersigned (the "Community Gardener") wants to use the property (the "Property") shown identified in the Key Map on page 3 of this Full and Final Release and Indemnity (the "Release and Indemnity") for the sole purpose (the "Sole Permitted Purpose") of planting and maintaining a garden for the growing of fruits and vegetables (collectively in this Release and Indemnity referred to "vegetables"); and
- B. The Town has, subject to the terms and conditions set out in this Release and Indemnity, agreed to permit the Community Gardener to use, on a non-exclusive basis, the Property for the Sole Permitted Purpose.

In consideration of being, subject to the terms and conditions contained in this Release and Indemnity, permitted the non-exclusive use of the Property for the Sole Permitted Purpose, and other good and valuable consideration, the receipt of which is hereby acknowledged by the Community Gardener,

1. the Community Gardener acknowledges and agrees:
- a) to use the Property only for the Sole Permitted Purpose and to maintain the appearance of the Property in a clean, and well-kept manner;
  - b) not to erect any buildings or structures in or on the Property, nor dig or cultivate or otherwise enter into the ground more than 8 inches, without the prior written consent of the Town;
  - c) to ensure that no grade changes are carried out;
  - d) not to assigned and/or transfer any right or interest or otherwise herein without the prior written consent of the Town;
  - e) to comply with all federal, provincial, and municipal laws, rules, regulations, and by-laws (herein collectively referred to as the "Laws"), and to hold the Town, its officers, employees, servants, agents, members of council, and/or other representatives or otherwise harmless from the consequences of the Community Gardener's failure to do so;
  - f) that the Community Garden shall be developed and maintained at no cost to the Town;
  - g) that no activity shall occur on the site after dark;
  - h) that subject to the Town's right to disallow composting at any time and for any reason, composting is permitted provided it is in a contained unit designed for the purpose of composting;
  - i) that the edge of the Community Garden or any part thereof, shall be a minimum of 25 feet from all lots lines;
  - j) that the Vegetables from the Community Garden shall not be sold or offered for sale either from in or on the Property or from any other location whatsoever;
  - k) that signage is permitted but shall comply with the Town's sign by-law;
  - l) that the Property shall be maintained in a neat and orderly manner. Trash, weeds, dirt piles and debris of any sort shall not be allowed to accumulate;
  - m) that the opportunity to participate must be open to any resident of the Town of Fort Frances;
  - n) that no pesticides shall be used on the Property; and
  - o) that upon cancellation and/or termination of use and/or access and/or permission as set out in paragraph 2.b) of this Release and Indemnity by the Town the Community Gardener shall peaceably forthwith surrender and yield up the Property, and if the Town so requires, shall restore the Property to the condition the Property was in prior to the development of the Community Garden;

2. the Community gardener acknowledges and agrees, notwithstanding anything contained in this Release and Indemnity, that:
  - a) the Town shall have the right at any time to go in and on the Property for any reason and for any purpose the Town may require, and to do any work or thing therein and thereon, without liability and/or compensation whatsoever to the Community Gardener or otherwise;
  - b) the Town shall have the right to deny the Community Gardener use of and/or access to the Property at any time and/or to cancel and/or terminate any permission granted by the Town herein or hereunder at any time, for any reason, without any prior notice, and the community Gardener shall thereupon vacate the Property; and
  - c) gardening is a potentially hazardous activity. The use of the Property by the Community Gardener for the Sole Permitted Purpose is voluntary and completely at the sole risk of the Community Gardener. The Community Gardener shall and does hereby assume and accept all risks associated with gardening and his/her use of the Property including, without limitation, those caused by terrain, facilities, soil conditions, temperature, physical exertion, sun an/or chemical and/or insect and/or rodent and/or fungal and/or other exposure, and/or the action and/or failure to act of other people, and otherwise;
  - d) the Town shall have the right, at any time and from time to time, without notice to the Community Gardener, to amend this Release and Indemnity and/or any provision thereof, in its sole and unfettered discretion; and
3. the Community Gardener on his/her own behalf and on behalf of his/her estate trustees, heirs, executors, administrators, personal representatives, successors and assigns (collectively herein sometimes referred to as the "Releasor", which term includes any one of them) shall and does hereby release, forever discharge and indemnify and same harmless, the Town, its officers, employees, servants, agents, members of council, and/or other representatives or otherwise (collectively herein sometimes referred to as the "Releasee", which term includes any one of them) from and against all claims, demands, costs, suits, actions, causes of action, proceedings, loss, damage, expense, and/or liability or injury of any nature or kind whatsoever (including, without limitation, any claim for loss, damage, or otherwise, not yet ascertained), made and/or incurred by the Releasor and/or any minor the Community Gardener for any reason brings or allows onto the Property, and whether for property damage, personal injury, or death, or otherwise, resulting from, cause by, or in any manner arising out of or connected with (and whether directly or indirectly);
  - a) the Releasor's use of the Property and/or any activity and/or otherwise of the Releasor in any way connected therewith; and
  - b) any act or failure to act, whether negligent or otherwise, of the Releasee; and
  - c) any act or failure to act, whether negligent or otherwise, of any other person.

And the Releasor further agrees that the Releasor shall not take any action nor make any claim, demand, or otherwise in connection therewith against anyone to the extent that they may have a claim against the Releasee.

The Community Gardener acknowledges, agrees, and confirms that he/she has reviewed and understands this Release and Indemnity and the consequences of signing it, and is signing this Release and Indemnity voluntarily, without duress.

The terms of this Release and Indemnity shall enure to the benefit of and be binding upon each Party and/or his/her respective estate trustees, heirs, executors, administrators, personal representatives, successors, and assigns.

The Community gardener shall execute further and other documents and do such further and other things as may be required to give effect to the terms and intent of this Release and Indemnity.

There are no representations, collateral agreements, warranties or conditions affecting this Release and Indemnity except as set out herein.

This Release and Indemnity may be amended by a further agreement in writing and witnessed.

IN WITNESS whereof the Community Gardener has executed this Release and Indemnity under seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Witness

\_\_\_\_\_\*  
Community Gardener (signature)

Printed Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Key Map:

