

**BY-LAW NO. 002  
of the Fort Folly Band  
A By-law Dividing the Reserve into Zones  
and Regulating the Use of Land**

**Enacted on the 26 day of January 1999.**

**WHEREAS** the Council of the Fort Folly Band desires to make a by-law dividing the reserve into zones and regulating the use of land;

**AND WHEREAS** the Council of the Fort Folly Band is empowered to make such by-law pursuant to paragraphs 81(1)(g), (q) and (r) of the Indian Act;

**AND WHEREAS** it is considered necessary for the development of the reserve lands of the Fort Folly Band to regulate the use of reserve lands;

**AND WHEREAS** the Council of the Band did enact By-law Number 002 on the 26 day of January, 1999.

**NOW THEREFORE** the Council of the Fort Folly Band hereby makes the following by-law:

**PART I - GENERAL**

**Short Title**

1. This by-law may be cited as the "Fort Folly Band Zoning By-law".

**Interpretation**

2. In this by-law,

"*accessory building or structure*" means a detached building or structure, the use of which is incidental or secondary to that of the main building;

"*accessory use*" means a use customarily incidental and subordinate to the principal use;

"*agriculture*" means a use of land, buildings or structures for the purpose of field crops or fruit, market gardening, dairying, animal husbandry, poultry raising, bee keeping and such uses as are customarily and normally related to agriculture;

**"assembly hall"** means a building or part of a building in which facilities are provided for such purposes as meetings for civic, education, political, religious or social purposes, and includes a banquet hall;

**"attached"** means a building otherwise complete in itself, which depends for structural support, or complete enclosure, upon a division wall or walls shared in common with adjacent building or buildings;

**"Band"** means the Fort Folly Band;

**"building"** means any structure used or designed to be used for shelter, accommodation or enclosure of persons, animals, or chattels;

**"business and professional office"** means an office in which any business is carried on or any profession is practised;

**"community centre"** means any tract of land or buildings or any part of any buildings used for community activities, whether used for commercial purposes or not, and the control of which is vested in the Band council, a local board or agent thereof;

**"conservation area"** means the maintenance of the natural environment for the purpose of preservation, research, observation and outdoor uses such as hiking, hunting and fishing, and includes the erection and use of trail shelters and other similar structures ancillary to the foregoing uses, but does not include the use of a dwelling house, a mobile home, a tourist vehicle or a tourist trailer;

**"convenience store"** means a retail commercial establishment supplying groceries, sundries and other daily household necessities to the immediate surrounding area;

**"cottage industry"** means a use accessory to a single family dwelling, and includes a carpentry shop, a craft shop, a plumbing shop, a metal working shop, an electrical shop, a welding shop, a storage building for school buses, boats or snowmobiles, a repair shop for farm equipment, or any similar use;

**"Council"** means the Council, as defined in the *Indian Act*, of the Fort Folly Band;

**"apartment dwelling house"** means the whole of a building not otherwise defined herein, which contains four or more dwelling units served by a common entrance, in which the occupants have the right to use in common any corridors, stairs or elevators contained therein, and the land appurtenant thereto;

**"duplex"** means a building that is divided horizontally into two dwelling units, each of which has an independent entrance;

**"one family"** means a separate building containing only one dwelling unit;

**"two family"** means a separate building containing only two dwelling units;

**"triplex"** means the whole of a building that is divided horizontally into three separate dwelling units, each of which has an independent entrance, either directly from the outside, or through a common vestibule;

**"semi-detached"** means a building that is divided vertically into two dwelling units;

**"dwelling unit"** means one or more habitable rooms designed for use by and occupied by not more than one family and in which separate kitchen and sanitary facilities are provided for the exclusive use of such a family, with a private entrance from outside the building or from a common hallway or stairway inside the building;

**"dwelling unit area"** means the floor area of a dwelling unit measured between the exterior faces of the exterior walls of the dwelling unit;

**"eating establishment"** means a building or part of a building where food is offered for sale or sold to the public for immediate consumption therein, and includes a restaurant, cafe, tea or lunch room, dairy bar, and refreshment room or stand, but does not include a boarding or lodging house;

**"erect"** means build, construct, reconstruct, or relocate, and includes any preliminary physical operations such as cutting, grading, excavating, filling or draining, and any altering of an existing building by an addition, extension or other structural change;

**"farm"** means land used for the tillage of soil and the growing of vegetables, fruits, grains and other staple crops, and includes land used for livestock raising, dairying or woodlots;

**"forestry"** means the management, development and cultivation of timber resources to ensure the continuous production of wood or wood products, provision of proper environmental conditions for wildlife, protection against floods and erosion, protection and production of water supplies, and preservation of the recreation resource;

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**"garage, commercial"** means a building, structure or lot where commercial vehicles are stored or where vehicles are repaired or maintained;

**"gravel pit"** means any open excavation made for the removal of any soil, earth, clay, marl, sand, gravel or unconsolidated rock or mineral in order to supply material for construction, manufacturing or industrial purposes;

**"group home"** means a single housekeeping unit in a residential dwelling in which three to ten residents live as a family under responsible supervision and shall be licenced under Provincial or Federal Statute, and may also include a non-residential special needs group facility such as a group school.

**"hazard land"** means land which is not suitable to be used for the erection of any building because it is on a flood plain, is subject to erosion, has steep slopes, has organic soil or has a high water table;

**"height"** means, when used with reference to a building, the vertical distance between the average elevation of the finished surface of the ground at the front of the building and

- (a) in the case of a flat roof, the highest point of the roof surface or the parapet, whichever is the greater,
- (b) in the case of a mansard roof, the deck roof line, and
- (c) in the case of a gable, hip or gambrel roof, the mean height between the eaves and ridge;

**"home occupation"** means an occupation, trade, business profession or craft carried on as an accessory use to the use of a dwelling that is the private residence of the person carrying on the occupation, trade, business, profession or craft;

**"hunt club"** means a structure of light frame construction, without a basement, without an interior finish on its walls and ceiling, and without any source of heat which is intended to provide basic shelter and accommodation on an occasional basis for a person or a group of persons engaged in hunting or fishing activities;

**"mobile home"** means any dwelling that is designed to be made mobile, and constructed or manufactured to provide a permanent residence for one or more persons, but does not include a travel trailer or tent trailer or trailer otherwise designed, and does not include a modular home;

**"non-conforming"** means that which does not conform, comply or agree with the provisions of this by-law as of the date it was made;

**"noxious use"** means any use which is offensive or dangerous by reason of the emission of odour, smoke, dust, noise, gas, fumes, vibration or refuse matter;

**"nursery"** means land used for the growing of sod, flowers, bushes, trees or other gardening, landscaping or orchard stock for wholesale or retail trade;

**"official plan"** means a document that sets out proposals for future development on the reserve and is accompanied by maps and charts;

**"owner"** means any person lawfully in possession of land, buildings or structures;

**"person"** includes an individual, an association, a chartered organization, a firm, a partnership and a corporation;

**"place of entertainment"** means a motion picture or other theatre, arena, auditorium, public hall, billiard or pool room, bowling alley, ice or roller skating rink, dance hall, music hall, bingo hall, amusement arcades, but does not include any place of entertainment or amusement otherwise defined or classified herein.

**"restaurant"** means a building or part of a building where food is offered for sale or sold to the public for immediate consumption therein, but does not include a boarding or lodging home;

**"reserve"** means the reserve of the Fort Folly Band and includes the Band's Reserves No. 009;

**"retail store"** means a building or part of a building in which goods, wares, merchandise, substance, articles or things are offered or kept for sale at retail;

**"roadside stand"** means a retail store not exceeding nineteen square metres in floor area, in which the goods displayed or offered for sale are produced on the same land from agricultural uses;

**"stone quarry"** means any open excavation made for the removal of any consolidated rock or mineral, including limestone, sandstone or shale, in order to supply material for construction, industrial or manufacturing purposes, but does not include an excavation incidental to the erection of a building or structure for which a building permit has been granted by the Council;

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"*structure*" means anything constructed or erected, the use of which requires location on or in the ground or attached to something having location on or in the ground;

"*water setback*" means the straight line horizontal distance from the high water mark of a watercourse, bay or lake to the nearest part of any excavation, building, structure or open storage use on the land;

"*zone*" means a designated area of land use shown on Schedule "A" hereto;

"*Zoning Administrator*" means the person appointed or designated by the Council under this by-law and charged with the duty of administering and enforcing the provisions of this by-law.

#### **Application of By-law**

- 3.(1) The provisions of this by-law apply to all lands of the reserve of the Fort Folly Band as shown on Schedule "A".
- (2) Schedule "A", which is attached hereto, is a part of this by-law as fully and to all intents and purposes as though recited in full herein.

### **PART II - ADMINISTRATION**

#### **Zoning Administrator**

- 4.(1) The Council may, by resolution, appoint or designate a person as Zoning Administrator whose duty it shall be to administer and enforce this by-law.
- (2) The Council may, in the resolution, provide for reasonable remuneration to be paid to the Zoning Administrator.

### **PART III - GENERAL ZONING PROVISIONS**

#### **Prohibition**

- 5.(1) No building or structure shall hereafter be erected or altered, nor shall the use of any land, building or structure hereafter be changed, in whole or in part, except in conformity with the provisions of this by-law.

(2) Notwithstanding any other by-law of the Council, no building permit shall be issued where the proposed building, structure or use would be in violation of any provision of this by-law.

#### **Non-Conforming Uses**

6.(1) Subject to subsection (2), nothing in this by-law prevents the use of any land, building or structure for any purpose prohibited by the by-law if such land, building or structure was lawfully used for such purpose on the day this by-law was made, so long as it continues to be used for that purpose.

(2) If a building or structure which does not conform with the requirements of this By-law with respect to use, lot occupancy, or height is destroyed, said building or structure may be restored to its original dimensions and strengthened to a safe condition, provided that such restoration or strengthening does not further increase the extent of non-conformity of such building or structure, and provided that all other applicable provisions of this By-law are complied with and the use is not a noxious use.

#### **Prior Building Permits**

7. Nothing in this by-law prohibits the erection of a building or structure for which a building permit was issued prior to the date this by-law was made.

#### **Exceptions to Height Limitations**

8. The height limitations of this by-law do not apply to chimneys, church spires, public buildings, water tanks, elevator enclosures, flag poles, television or radio antennae, electrical transmission facilities, ventilators or skylights.

#### **Accessory Buildings and Structures**

9. Accessory uses, buildings and structures, including private garages, are permitted in any zone within the reserve, but shall not

- (a) be used for human habitation, except where a dwelling is a permitted accessory use;
- (b) exceed four metres in height in any residential zone;
- (c) be built within two metres of the main building; or

- (d) be considered an accessory building attached to the main building in any way.

### **Temporary Construction Uses Permitted**

10. Nothing in this by-law prevents uses incidental to construction, such as a construction camp or other such temporary work camp, a tool shed, scaffold or other building or structure incidental to the construction, or a sign not more than four and one-half (4.5) square metres in area incidental to the construction, if these uses are permitted only for so long as they are necessary for work in progress which has neither been finished nor abandoned.

### **Occupancy of Incomplete Buildings**

11. In any zone, no new buildings shall be occupied before the main side walls and roof have been erected and roofing has been completed and, in the case of a dwelling, kitchen, heating and sanitary conveniences have been installed and rendered useful.

### **Setbacks**

12. Buildings and structures erected in any zone shall conform to the following setback requirements from road centre lines and high water marks of any water course, bay or lake:

- (a) Provincial highway - 18 metres
- (b) Road other than a provincial highway - 13 metres
- (c) Reserve road - 10 metres
- (d) Other road - 8 metres
- (e) Water setback - a minimum water setback of 15 metres shall be provided, but accessory boathouses and boat decks are not required to meet the water setback.

### **Occupation of Vehicles**

13. No car, truck, coach or streetcar body shall be used for permanent human habitation in any zone, whether or not mounted on wheels.

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### **Mobile Homes**



- 14.** Mobile homes are permitted on the reserve, except in a commercial zone.

**Home Occupations**

- 15.** A home occupation is permitted in any zone if
- (a)** only members of the family are employed in the home occupation;
  - (b)** there is no external display or advertising other than a non-illuminated sign, not more than three tenths of a square metre (.3m<sup>2</sup>) in area, to indicate to persons outside that any part of the dwelling unit or lot is being used for a purpose other than residential;
  - (c)** not more than 25% of the dwelling unit area is used for the purpose of the home occupation;
  - (d)** the home occupation is secondary to the main residential use and does not change the residential character of the dwelling home or dwelling unit;
  - (e)** there are no goods, wares or merchandise, other than arts and crafts produced on the premises, offered or exposed for sale or rent on the premises;
  - (f)** the home occupation does not create or become a nuisance, as defined in By-Law No. 1990.2, in particular, in regard to noise, traffic or parking;
  - (g)** the home occupation does not interfere with television or radio reception; and
  - (h)** a private garage is not used for the home occupation.

**Noxious Uses**

- 16.** No use is permitted which is offensive or dangerous by reason of the emission of odour, smoke, dust, noise, gas, fumes, vibration or refuse matter, or which from its nature or the materials used therein is declared to be a noxious trade, business or manufacturer under the [Public Health Act, (Ontario) and regulations thereunder or the Environmental Protection Act, (Ontario) and regulations thereunder].

**Cottage Industry**

- 17.** A cottage industry is permitted in a residential or rural zone if

- (a) not more than 10% or ten square metres of the dwelling unit area, whichever is the lesser, is used for the purposes of the cottage industry;
- (b) not more than fifty square metres of the gross floor area of all accessory buildings are used for the purposes of the cottage industry; and
- (c) not more than five persons, other than those residing on the premises, are engaged on the premises in the cottage industry.

**Railway Crossings**

18. Where any road crosses a railway, no building or structure shall be erected closer to the point of intersection of the centreline of both the railway and the road than forty-six (46) metres.

**Gravel Pits, Stone Quarries**

19. Gravel pits and stone quarries are prohibited, except in an industrial zone.

**Multiple Uses**

20. Where any land or building is used for more than one purpose, all provisions of this by-law relating to each use shall be satisfied and, where there is a conflict, the higher or more stringent standard shall prevail.

**PART IV - SPECIFIC ZONING PROVISIONS**

**Zones**

21. The reserve is divided into the following zones, as shown on Schedule "A" (Zoning map).

<b><u>Zones</u></b>	<b><u>Zone Symbols</u></b>
Residential	Zone R
Rural	Zone RR
Commercial	Zone C
Industrial	Zone I
Hazard Land	Zone HL
Community Facility	Zone CF

**Residential (R) Zone Permitted Uses**

**22.** Land may be used and buildings and structures erected, altered or used in a Residential (R) Zone only for

- (a) a single family dwelling;
- (b) a two family dwelling
- (c) a duplex dwelling;
- (d) a semi-detached dwelling;
- (e) an apartment dwelling;
- (f) a triplex dwelling;
- (g) a group home;
- (h) a mobile home dwelling;
- (i) a home occupation;
- (j) a park or playground;
- (k) a use accessory to any of the foregoing permitted uses.

**Residential (R) Zone Specifications**

**23.** Land may be used and buildings and structures may be erected, altered or used in a Residential (R) Zone only where the following specifications are complied with:

minimum lot area	2,025 square metres
minimum lot frontage	30 metres
minimum front yard depth	7.5 metres
minimum side yard width	3 metres or half the height of building, whichever is greater
minimum rear yard depth	7.5 metres
minimum dwelling unit area	55 square metres
maximum lot coverage	33%
maximum building height	13.5 metres
minimum number of parking spaces	1 per dwelling unit

**Rural (RR) Zone Permitted Uses**

**24.** Land may be used and buildings and structures may be erected, altered or used in a Rural (RR) Zone only for

- (a) a single family dwelling;
- (b) a mobile home dwelling;
- (c) an agricultural use, including a farm, truck, garden, nursery or green house;

- (d) an agricultural industry, including a blacksmith shop, garage, farm machinery repair shop, sawmill or cheese factory;
- (e) conservation;
- (f) forestry;
- (g) a cemetery;
- (h) a golf course;
- (i) hunting, fishing, trapping;
- (j) a hunt club;
- (k) a snowmobile club;
- (l) a seasonal fruit or vegetable roadside stand; or
- (m) a use accessory to any of the foregoing permitted uses.

**Rural (RR) Zone Specifications**

25. (Where applicable).

**Commercial (C) Zone Permitted Uses**

26. Land may be used and buildings and structures may be erected, altered or used in a Commercial (C) Zone only for

- (a) an automobile service station, commercial garage or automobile business, including sales and rentals;
- (b) a car wash;
- (c) a bank or other financial institution;
- (d) a personal service shop;
- (e) a boat, snowmobile, trailer or cycle business, including sales and rentals;
- (f) a business or professional office;
- (g) a convenience store;
- (h) a laundry or dry cleaning establishment;
- (i) a restaurant or other eating establishment;
- (j) a hotel;
- (k) a parking lot;
- (l) a place of entertainment;
- (m) a post office;
- (n) a recreational use;
- (o) a taxi stand;
- (p) a retail store; or
- (q) a use accessory to any of the foregoing permitted uses.

**Commercial (C) Zone Specifications**

27. (Where applicable)

**Industrial (I) Zone Permitted Uses**

28. Land may be used and buildings and structures may be erected, altered or used in an Industrial (I) Zone only for

- (a) an industry or manufacturing establishment, except one involving the danger of fire or explosion or likely to create a nuisance, as defined in By-law 1990.2, by reason of fumes, dust, odour, or excessive noise;
- (b) a warehouse or storage establishment;
- (c) a retail outlet, wholesale outlet or business office accessory to a permitted use;
- (d) a yard for fuel, lumber, building materials, contractor's equipment or similar material;
- (e) a contractor or tradesman's shop;
- (f) a farm implement sales or repair business;
- (g) a parking lot;
- (h) a junkyard or automobile wrecking yard but, where visible from a public road, only if screened from view by a fence not less than seven feet in height on all sides;
- (i) a dwelling for the owner, or for the use of a watchman or other employee whose residence on the premises is essential;
- (j) a use accessory to any of the foregoing permitted uses.

**Industrial (I) Zone Specifications**

29. (Where applicable).

**Hazard Land (HL) Zone Permitted Uses**

30. Land may be used and buildings and structures may be erected, altered or used in a Hazard Land (HL) Zone only for:

- (a) an existing dwelling at the date this by-law was made;
- (b) conservation;
- (c) forestry;
- (d) hunting, fishing or trapping;
- (e) outdoor recreation;
- (f) a structure for the prevention of erosion or for flood control;
- (g) a boathouse or dock;
- (h) a use accessory to any of the foregoing permitted uses.

**Hazard Land (HL) Zone Specifications**

31. (Where applicable).

**Community Facility (CF) Zone Permitted Uses**

32. Land may be used and buildings and structures may be erected, altered or used in a Community Facility (CF) Zone only for

- (a) an assembly hall;
- (b) a school;
- (c) a park;
- (d) a church;
- (e) a community centre or arena;
- (f) a nursing home;
- (g) a medical clinic or hospital;
- (h) a senior citizen apartments;
- (i) a Band Council office or other administrative office of the Band;
- (j) a cemetery;
- (k) recreational use;
- (l) a fairground;
- (m) a use accessory to any of the foregoing permitted uses.

**Community Facility (CF) Zone Specifications**

33. (Where applicable).

**PART V - OWNER APPLICATIONS**

**Minor Variance**

34. The owner of any land, building or structure affected by this by-law may apply to the Council for a minor variance from the provisions of this by-law, in respect of the land, building or structure, or use thereof.

**Non-Conforming Uses**

35. Where any land, building or structure, on the day this by-law was made, was used for a purpose prohibited by the by-law, the owner of any land, building or structure may apply to the Council for authorization to

- (a) enlarge or extend the building or structure, if the land, building or structure continues to be used in the same manner and for the same purpose as it was used on the day this by-law was made; or

(b) to use such land, building or structure for a purpose that is similar to the purpose for which it was used on the day this by-law was made, or is more compatible with the uses permitted by the by-law than the purpose for which it was used on the day this by-law was made.

### **Amendment**

**36.(1)** The owner of any land, building or structure may apply to the Council for an amendment to this by-law.

(2) An owner who applies under subsection (1) must set out in the application the reasons for the amendment and submit detailed site plans, where applicable.

### **Hearing**

**37.** Within ninety days of the filing of a properly completed application under section 34, 35 or 36, the Council shall hold a hearing with respect to the application.

### **Notice**

**38.** At least fourteen days prior to the hearing, the Zoning Administrator shall

(a) give notice to the applicant of the date, time and place of the hearing and informing the applicant, and any other resident of the reserve, that they have the right to appear at the hearing and to be heard in respect of the application; and

(b) post in the Band Office a copy of the notice.

### **Hearing**

**39.** At the hearing, the Council shall

(a) provide the applicant with an opportunity to present evidence and to make oral or written submissions in support of the application; and

(b) provide any resident present at the hearing with an opportunity to be heard.

### **Rules of Procedure**

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**40.** The Council may make rules of procedure governing the hearing of applications and shall keep records of its proceedings.

**Decision**

**41.** After it has heard all of the evidence and submissions, the Council shall meet in private to consider the application.

**Criteria - Minor Variance**

**42.** In determining whether an application for a minor variance should be granted, the Council shall take into consideration

- (a) whether the minor variance is desirable for the appropriate development or use of the land, building or structure;
- (b) whether the general intent and purpose of this by-law and the official plan, if any, will be maintained; and
- (c) [other].

**Criteria - Non-Conforming Use**

**43.** In determining whether an application for an extension or modification of a non-conforming use should be granted the Council shall take into consideration

- (a) whether the extension or modification is desirable for the appropriate development or use of the land, building or structure;
- (b) whether the general intent and purpose of this by-law and the official plan, if any, will be maintained; and
- (c) [other].

**Criteria - Amendment**

**44.** In determining whether an application for an amendment to this by-law should be granted, the Council shall take into consideration

- (a) whether the amendment is desirable for the appropriate development or use of the land, building or structure;
- (b) whether the general intent and purpose of this by-law and the official plan, if any, will be maintained; and
- (c) [other].

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**Notice of Decision**



45. Within ten days after the hearing, the Council shall render its decision on the application and shall give a written notice of its decision to the applicant which incorporates written reasons in support of its decision.

**Posting Decision**

46. Within five days after disposing of the application, the Council shall post a notice of its decision in the Band office.

**PART VI - ENFORCEMENT**

**Inspection**

47. The Zoning Administrator may, at all reasonable hours, enter and inspect any land, building, structure or other property for the purpose of determining whether this by-law is being complied with.

**Offence**

48.(1) A person who uses land, or who erects or uses any building or structure or any part of land or a building or structure, in a manner contrary to any provision of this by-law, or who causes or who permits such use or erection, or who otherwise violates any provision of this by-law or causes or permits any such violation, commits an offence.

(2) A person who interferes with or obstructs the Zoning Administrator in the administration and enforcement of this by-law commits an offence.

(3) Where an act or omission in contravention of this by-law continues for more than one day, such act or omission shall be deemed to be a separate offence committed on each day during which it continues, and may be punished as such.

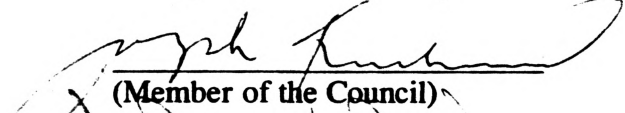
**Penalty**

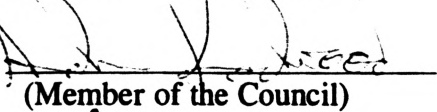
49. A person who commits an offence under section 48 is liable on summary conviction to a fine not exceeding \$ 1000.00 or to imprisonment for a term not exceeding 30 days or to both.

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**THIS BY-LAW IS HEREBY** made at a duly convened meeting of the Council of the Fort Folly Band this 26 day of January, 1999.

Voting in favour of the by-law are the following members of the Council:

  
(Member of the Council)

  
(Member of the Council)

  
(Member of the Council)


being the majority of those members of the Council of the Fort Folly Band present at the aforesaid meeting of the Council.

The quorum of the Council is 2 members.

Number of members of the Council present at the meeting: 3.

I, Joseph Knockwood Chief of the Band, do hereby certify that a true copy of the foregoing by-law was mailed to the Minister of Indian Affairs and Northern Development at the Regional office of the department pursuant to subsection 82(1) of the Indian Act, this 28 day of Jan, 1999

  
(Witness)

  
(Chief/Councillor)

**SCHEDULE "A"**  
**ZONING MAP OF THE RESERVE OF THE**  
**FORT FOLLY BAND**

## **NOTES**

### **General**

Section 81(1)(g) of the Indian Act gives a Band authority to make by-laws providing for the division of the reserve or a portion thereof into zones and the prohibition of construction of buildings or the carrying on of business in any zone. It has been held by the courts that the reserve must first be divided into zones before construction of any buildings or the carrying on of any type of business can be prohibited in a particular area on the reserve. It has further been held that it is not an excessive use of the Band Council's authority under section 81 to create, by by-law, one zone applicable to all reserve lands and to prohibit all classes of construction within that zone without first obtaining a permit.

A zoning by-law regulates the use of land and establishes the standards by which land can be developed. In this sample by-law, all lands within the reserve are placed into specific zones according to the Zoning Map attached as Schedule "A".

The zoning by-law is not retroactive, that is, it does not require existing property and structures to meet the requirements of the zoning by-law. However, any new development on the reserve will be required to meet the standards of the zoning by-law.

As the zoning by-law is an important and controversial by-law, it is advisable that the Band Council hold a band meeting to review the by-law before adopting it.

It is also advisable that Band Councils hire a municipal planner or a municipal lawyer to help the band establish its development policies and plans. It is possible that a band may wish to have an "official plan" which is a document that sets out proposals for future development on the reserve and is accompanied by maps and charts. An official plan contains objectives and policies established primarily to provide guidance for the physical development of the reserve.

### **Part III - General Zoning Provisions**

Part III includes the main general provisions that may be found in a zoning by-law. Other general provisions that may be found in zoning by-laws are with respect to the following:

- parking and loading areas
- automobile service stations
- visibility at intersections and residential zones
- building lots and yards
- encroachments.

#### **Part IV - Specific Zoning Provisions**

This by-law sets out the most common zones one is likely to come across in a zoning by-law. Other types of zones are the following:

- Institutional Zone
- Development Zone
- Open Space Zone
- Forest Resource Zone
- Stream and Wetland Zone
- Industrial Zones
- General Industrial Zone
- Restricted Industrial Zone
- Disposal Industrial Zone
- Extractive Industrial Zone
- Industrial Park Zone
- Commercial Zones
- General Commercial Zone
- Highway Commercial Zone
- Local Commercial Zone
- Tourist Commercial Zone
- Rural Zones
- Restricted Rural Zone
- Rural Agricultural Zone
- Rural Marginal Zone
- Residential Zones
- Rural Residential Zone
- Limited Service Residential Zone
- Low Density Zone
- Multi-Family Residential Zone
- Mobile Home Residential Zone
- Single Family Residential Zone
- Hamlet Zone
- Hamlet Commercial Zone
- Hamlet Residential Zone

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#### **Section 23 - Residential (R) Zone Specifications**

Section 23 sets out a series of specifications for the erection, alteration, or use of any building or structure in a residential zone. Band Councils may or may not wish to add such a provision in their zoning by-law. As a reserve is not normally divided into "lots", it is difficult to set out, with any precision, the dimensions as specified in section 23. A Band Council may, however, wish to regulate the maximum building height or the number of parking spaces for a particular building under this section. Such a section will be useful where a band's land has been divided into "lots" by the issuance of Certificates of Possession.

### **Part V - Owner Applications**

#### **Section 34 - Minor Variances**

Because the zoning by-law is expressed in general terms and is designed to apply to normal situations, it cannot cover all of the unusual conditions that may arise with respect to a particular parcel of land. Hardships may often occur to users of land if a by-law is enforced to the letter of the law. The granting of minor variances is, therefore, a technique which is used to overcome the rigidity of zoning by-law provisions setting forth development standards. In this sample by-law, the Council may grant a minor variance from the provisions of the by-law to an owner of any land, building or structure affected by the zoning by-law. A formal amendment to the zoning by-law is not necessary in such a case.

What constitutes a minor variance is a question of degree and usually applies to a particular parcel of land. Where an owner applies to the Council with respect to a major change to the zoning by-law, such change would have to be done by a formal amendment.

#### **Section 35 - Non-Conforming Uses**

A non-conforming use of any land, building or structure is a use which does not conform, comply or agree with the provisions of a zoning by-law as of the date the by-law is made (as opposed to when it comes into force under s. 82(2) of the Indian Act). Once a zoning by-law is made, a non-conforming use will be entitled to continue. However, any further enlargement or extension of a non-conforming use of a building, land or structure will not be permitted unless the owner has authorization from the Council to do so. As well, an owner must apply to the Council for authorization to use land, building or structures for a purpose similar to the purpose for which it was used on the day the by-law was passed or which is more compatible with the uses permitted by the by-law than the purpose for which it was used on the day the by-law was passed.

### **Section 36 - Amendment**

A Council can always, of its own motion, amend its zoning by-law by following the procedure to amend a by-law set out in Part III of this manual - Procedural Guidelines.

Section 36 of this sample zoning by-law deals with a situation where an owner of any land, building or structure may apply to the Council for an amendment to the by-law. For example, an owner may wish to have an area of the reserve re-zoned from residential to commercial. It must be remembered that when a zoning by-law is amended, vested rights cannot be abrogated. In other words, a zoning by-law which is amended is not retroactive and cannot affect any vested or acquired rights under the previous zoning by-law. The amended zoning by-law applies only to future development.

### **Part VI - Enforcement**

A person who violates the zoning by-law will be charged by the Zoning Administrator and will be liable on summary conviction to a fine not exceeding \$1,000 or to imprisonment not exceeding thirty days, or to both. In addition, an injunction may be obtained under Section 81(2) or (3) of the Indian Act to prohibit the continuation or repetition of the illegal use under the Zoning By-law.

As already mentioned, this by-law is only a sample of the main components of a zoning by-law. Many difficult issues arise in the area of zoning (for example, spot-re-zoning and discrimination), and therefore bands are strongly advised to consult a professional in this area before developing a planning policy and drafting a zoning by-law.

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