

# POLICY

	Policy:	<b>Disposal of Surplus Real Property</b>		
	Department:	Planning, Development and Legislative Services		
	Division:	N/A	By-Law No.:	N/A
	Administered By:	Director of Planning, Development and Legislative Services	Approval Date:	June 22, 2020
	Replaces:	<i>Disposition of Surplus Town Property – June 8, 2015</i>		
	Attachment(s):	N/A		

## 1. POLICY STATEMENT

The Corporation of the Town of Amherstburg is committed to open, transparent, consistent and equitable activities in relation to the Disposal of surplus Town Real Property in the manner that best serves the interests of the Town of Amherstburg and keeps business moving forward.

## 2. PURPOSE

- 2.1. To abide by section 270 of the *Municipal Act, 2001* (the “Act”) that requires all municipalities to adopt and maintain a policy with respect to sale and disposition of Real Property.
- 2.2. To provide a basis for establishing procedures to dispose of Real Property deemed surplus to the needs of the Town in a consistent, transparent and equitable manner.

## 3. SCOPE

- 3.1. Subject to section 3.2, this policy is applicable to all Town operations involving the Disposal of Town Real Property, including any agencies, boards or commissions whose financial operations are accounted for within the Town’s financial statements.
- 3.2. This policy is not applicable to the Disposal of land where:
  - 3.2.1. The transaction is governed by the federal and/or provincial government:
    - 3.2.1.1. The sale of lands for Tax Arrears as indicated in the *Municipal Act, 2001*.
    - 3.2.1.2. The expropriation of land under the *Expropriations Act, 1990*.
    - 3.2.1.3. Any other situations as governed by provincial or federal legislation.
  - 3.2.2. The transaction is completed in accordance with Council direction and the legal entity obtaining ownership or interest in the land is any government authority including, but not limited to the federal government, Ontario provincial government, crown agencies, school boards having jurisdiction within Town limits, and the Essex Region Conservation Authority.
  - 3.2.3. The Disposal is being done by a corporation and the Town is the sole shareholder of that corporation.

- 3.2.4. The Town is transferring Real Property to a corporation in which the Town is the sole shareholder and the transaction is completed in accordance with Council direction.
- 3.2.5. The property is deemed to be a Special Project and the transaction is completed in accordance with Council direction.
- 3.2.6. A closed alley, closed road, road allowance or right-of-way is conveyed to an abutting property owner(s) and the transaction is completed with Council direction and as outlined in the Provision of Notice to the Public Policy.
- 3.2.7. The transaction involves other land interests and it is completed in accordance with Council direction or other approved by-laws or policies.
- 3.2.8. Other agreements authorized by Council, such as a development agreement.
- 3.3. This policy shall be reviewed every five (5) years from the date it becomes effective, and/or sooner at the discretion of the CAO or designate.

#### **4. DEFINITIONS**

- 4.1. **Agreement** means a legal document that binds the Corporation of the Town of Amherstburg and all other parties, subject to the provisions of the contract.
- 4.2. **Appraisal** is a written opinion of the fair market value of the surplus property land and may include a letter of opinion.
- 4.3. **Disposal** is the sale, exchange for other lands or the lease for a specified term any portion of the Town's surplus Real Property. A Disposal does not include the granting of an easement or a right-of-way.
- 4.4. **Execute** means to legally bind the Corporation of the Town of Amherstburg to the terms and conditions defined within an agreement by applying signatures of designated signing authorities of all parties named in the agreement and the corporate seal (if applicable).
- 4.5. **Expression of Interest (EOI)** means a situation where vendors are solicited by the Town to advise of their ability or desire to undertake Town projects. This is not to obtain costs for services.
- 4.6. **Market Value** means the most probable price which a property should bring in a competitive and open market as of a specified date under all conditions requisite to a fair sale, the buyer and seller each acting prudently, knowledgeably and in their own best interests and assuming the price is not affected by undue stimulus.
- 4.7. **Non-Viable Real Property** means surplus Real Property for which a building permit cannot be granted because it is either landlocked, or because it is of insufficient size and shape to permit development unless developed in conjunction with abutting land.

- 4.8. **Notice** means the notification provided to the public in accordance with the provisions of this policy.
- 4.9. **Other Land Interests** is the granting of an interest in land that is not a disposal, such as easements, leases, encroachments, etc.
- 4.10. **Real Property** means land and buildings which are owned by the Town of Amherstburg, including Viable and Non-Viable property.
- 4.11. **Sale** means an agreement to purchase property for an agreed upon sum of money or declared equivalent in exchange for title to the property.
- 4.12. **Special Project** means Real Property to be used for development or other opportunity, as determined by Council.
- 4.13. **Surplus Property** means Real Property located in the Town of Amherstburg and owned by or for the benefit of the Town for which Council has determined that the disposition of the said land is in the best interests of the Town after a consideration of all relevant circumstances, including, but not limited to, the current and future programs and operational requirements of the Town.
- 4.14. **Viable Real Property** means a parcel of land which, on its own, would be eligible for a building permit.

Common definitions, acronyms, and terms are available in the Glossary located on the Town's Policies webpage.

## 5. **INTERPRETATIONS**

- 5.1. Any reference in this policy to any statute or any section of a statute shall, unless expressly stated, be deemed to be reference to the statute as amended, restated or re-enacted from time to time. Any references to a by-law or Town policy shall be deemed to be a reference to the most recent passed policy or by-law and any replacements thereto.
- 5.2. All dollars in this document are expressed in Canadian Dollars.
- 5.3. All solicitations and processes under this Policy shall be conducted in English.

## 6. **GENERAL CONDITIONS**

### 6.1. **Council Privilege**

- 6.1.1. Council reserves the right to refuse, in its sole discretion, any submission to purchase any property or part thereof, regardless of whether the applicant has met all requirements herein.
- 6.1.2. Council reserves the right to adjust the Disposal price where, in the opinion of Council, it is in the best interests of the Town to do so.

- 6.1.3. Council reserves the authority to waive any section of this policy.
- 6.1.4. Council may delegate its authority, by way of resolution, to the Chief Administrative Officer in regard to this policy.

6.2. **Standardization**

- 6.2.1. It will be the policy of the Town of Amherstburg, wherever possible, to standardize the Disposal of Surplus Real Property to allow for the Town to:
  - 6.2.1.1. Divest itself from Real Property with little to no value to the Town.
  - 6.2.1.2. Maximize asset potential.
  - 6.2.1.3. Reduce risk or liability to the Town.
  - 6.2.1.4. Promote growth and development within the Town of Amherstburg.
  - 6.2.1.5. Institute fair and competitive bidding on Real Property.
  - 6.2.1.6. Apply a consistent and streamlined process with regard to the Disposal of Real Property.

6.3. **Declaration of Surplus Property**

- 6.3.1. The Director of Planning, Development and Legislative Services or designate shall ensure that all utilities and third-parties who have infrastructure, or other assets, located on the subject Real Property are consulted, prior to the Real Property being declared Surplus.
- 6.3.2. The Director of Planning, Development and Legislative Services, or designate shall obtain comments from Town departments regarding the resulting effects on operations prior to the subject Real Property being declared Surplus.
- 6.3.3. Prior to the Disposal of Real Property, Council shall declare the property surplus by official resolution at a public meeting of Council.

6.4. **Notifications**

- 6.4.1. Notification of the intention to dispose of Real Property shall be provided to the public in the local newspaper and/or the Town's website for a period of not less than one week.
- 6.4.2. Notice may not be provided if the Disposal of Real Property is for a land exchange. This will be determined and approved by the CAO.
- 6.4.3. If the Town was provided an Expression of Interest to purchase Real Property, subject to the approval of Council, the Disposal of the subject Real Property may be conducted through direct negotiation with the potential buyer and public notice

of the intent to dispose of the subject Real Property will not be provided. (See Section 6.8.2.3)

## 6.5. **Property Values**

- 6.5.1. Prior to the negotiation of a Disposal of Viable Real Property, an Appraisal shall be obtained.
- 6.5.2. Disposal of Viable Real Property will be at the appraised value, or equivalent consideration, plus costs as shown below in section 6.13.1 unless Council directs otherwise.
- 6.5.3. Non-Viable Real Property which cannot be rendered viable by means of a consent under the *Planning Act*, regardless of location, will be valued at \$1.00.
- 6.5.4. Non-Viable Real Property which can be rendered viable by means of consent under the *Planning Act* will be sold at appraised Market Value or equivalent consideration plus costs as shown below in section 6.13.1, unless Council directs otherwise.

## 6.6. **Appraisals**

- 6.6.1. Appraisals will be prepared by one of the following:
  - 6.6.1.1. An independent qualified appraiser who may be a registered member in good standing of the Appraisal Institute of Canada.
  - 6.6.1.2. A real estate brokerage firm or an independent real estate agent.
  - 6.6.1.3. Any other person deemed by the CAO to be qualified for this purpose, including a qualified land assessor in the Province of Ontario.
- 6.6.2. The acquisition of professional services to provide Real Property appraisals shall be conducted in accordance with the Town's *Procurement Policy*.

## 6.7. **Land Surveys**

- 6.7.1. Before the Disposal of any Real Property, the Town shall obtain or require a survey of the land from an independent surveyor in accordance with the laws of the Province of Ontario. The acquisition of professional services to provide land surveys shall be conducted in accordance with the Town's *Procurement Policy*. The CAO may waive this requirement if an existing survey is available.

## 6.8. **Methods of Disposal**

### 6.8.1. **Public Advertisement**

- 6.8.1.1. Subject to direction from Council, Viable Real Property will be listed by a real estate brokerage firm or independent real estate agent retained by the Town for Real Property transactions. The retention of real estate

brokers or agents to dispose of Viable Real Property shall be conducted in accordance with the Town's *Procurement Policy*.

6.8.1.2. All Viable Real Property will be marketed for a period of at least ten business days prior to the review and consideration of any offer to purchase, except as otherwise provided in this policy.

6.8.2. **Direct Negotiation**

6.8.2.1. Viable Real Property or Non-Viable Real Property which can be rendered viable by means of a consent under the *Planning Act*, may be sold directly to the abutting property owner(s). If more than one abutting property owner wishes to acquire the Real Property, the Director of Planning, Development and Legislative Services or designate will contact the abutting owners to determine whether a consensus can be arrived at in splitting the property among interested abutting owners. In the event that a consensus cannot be arrived at, all interested abutting owners will be requested to provide the Town with an offer for the entire Real Property.

6.8.2.2. Non-Viable Real Property which cannot be rendered viable by means of consent under the *Planning Act* may be sold directly to the abutting property owner(s) for lot consolidation purposes. Sale of this type of property will be done for no less than on a full cost-recovery basis, including, but not limited to, consulting fees, legal fees, disbursements, advertising, improvements and administrative costs. If more than one abutting property owner wishes to acquire the Non-Viable Real Property, the Director of Planning, Development and Legislative Services or designate will contact the abutting owners to determine whether a consensus can be arrived at in splitting the Non-Viable Real Property and costs among interested abutting owners. In the event that a consensus cannot be arrived at, all interested abutting owners will be requested to provide the Town with an offer for the entire Non-Viable Real Property.

6.8.2.3. If the Town receives an Expression of Interest to purchase Real Property, the Town may directly negotiate the sale of said property with the potential buyer upon Council's approval.

6.8.3. The Town reserves the right to dispose of Real Property by way of tender or request for quotation, if it has been deemed by the CAO to be in the best interests of the Town to do so.

6.8.4. The Director of Planning, Development and Legislative Services will confirm whether there is any right for a former owner to repurchase the Real Property under the *Expropriations Act* and advise Council of same by way of Council report.

6.9. **Real Property Transactions**

- 6.9.1. Disposals will be done in a manner consistent with accepted conveyancing practices, and in accordance with all applicable federal and provincial legislation and municipal by-laws and policies.
- 6.9.2. The Director of Planning, Development and Legislative Services, or designate, has the authority to extend or abridge the closing date or extend or abridge the timeframes on any conditions previously approved by Council on any disposal provided such extension or abridgement does not change the intent of the approved disposal.

#### 6.10. **Unserviced Real Property**

- 6.10.1. Real Property located in areas without municipal services will be retained by the Town until such time as services are available, except as provided in 6.10.2.
- 6.10.2. In the event of a special circumstance involving the potential disposition of unserviced Real Property, the CAO or Director of Planning, Development and Legislative Services will bring the issue to Council for its consideration.

#### 6.11. **Heritage Properties**

- 6.11.1. There will be no Disposal of Real Property under Part IV or Part V of the Ontario Heritage Act (a "Heritage Property") without Council approval. The local Heritage Committee will be consulted of any Heritage Property being made available for sale prior to Council consideration.

#### 6.12. **Disposal Price**

- 6.12.1. A minimum Disposal price shall be determined by the Director of Planning, Development and Legislative Services or designate based on either \$1,00 plus the estimated costs or the appraised value plus estimated costs incurred by the Town to dispose of the surplus Real Property. Costs may include but are not limited to the cost of; an Appraisal, survey, plans, studies, reports, legal fees, disbursements, consulting fees, advertising, improvements, and administrative fees.
- 6.12.2. The approved Disposal price shall not be lower than the minimum Disposal price unless Council determines that it is in the best interest of the Town to do so.

#### 6.13. **Offers of Purchase**

- 6.13.1. All offers to purchase Real Property from the Town by means of an Agreement of Purchase and Sale must be accompanied by a deposit in an amount determined by the Director of Planning, Development and Legislative Services or designate and shall be the greater of \$1,000 or 5% of the offered purchase price.
- 6.13.2. Unless otherwise directed by Council, all Disposals will be on a cash basis. If the Chief Administrative Officer is of the opinion that exceptional and specific circumstances exist that would warrant consideration of a Disposal on something other than a cash basis this will be presented to Council for consideration.

## 6.14. **Financial Responsibilities**

- 6.14.1. The purchaser shall be responsible for all costs incurred by the Town attributable to the sale of the subject property. These costs include, but are not limited to the costs of; surveys, plans, studies, report costs, Appraisals, consulting fees, legal fees, disbursements, advertising, improvements and administrative fees.
- 6.14.2. Should expenses be incurred by the Town for the intention of the Disposal of Real Property, but efforts do not result in a Disposal, the expenses shall be reported to Council along with a recommendation on funding the costs.
- 6.14.3. All proceeds from the Disposal of Real Property shall be deposited into the applicable Lifecycle Reserve or other reserve/reserve fund in accordance with Town Policy, third party agreements and/or legislation.

## 6.15. **Reporting**

- 6.15.1. When Council is presented with a report considering the declaration of Real Property to be surplus, the report shall include at a minimum:
  - 6.15.1.1. A description, location and sketch of the subject Real Property and its current uses.
  - 6.15.1.2. The reason why the Real Property should be declared surplus to the Town's needs.
  - 6.15.1.3. Associated risk with selling/not selling the Real Property.
  - 6.15.1.4. Persons, corporations, authorities, local boards and bodies that should be contacted and notice given (other than general public notice).
  - 6.15.1.5. Whether an Expression of Interest has been provided for the subject Real Property and details provided therein.
  - 6.15.1.6. Recommendations as to the method of Disposal.
  - 6.15.1.7. Recommendations to terms and conditions of a potential Disposal.
- 6.15.2. When Council is presented with a report to consider an offer to purchase Real Property from the Town, the report shall include at a minimum:
  - 6.15.2.1. A summary of the process used to offer the Real Property for Disposal and results thereof.
  - 6.15.2.2. The potential purchaser and offered price for the subject Real Property.
  - 6.15.2.3. Proposed future use of the Real Property.

- 6.15.3. Discussions regarding the Disposal of Real Property may be held in a closed in-camera session of Council as defined in the *Municipal Act, 2001*, as determined by the Clerk.
- 6.15.4. Any decisions to be made by Council as a result of closed session discussions regarding the Disposal of Real Property in a closed session shall be reported out in a public session by official resolution.

6.16. Authorizing By-law

- 6.16.1. Any Disposal of Real Property shall be ratified by a By-law authorizing the sale.

**7. RESPONSIBILITIES**

7.1. **Council** has the authority and responsibility to:

- 7.1.1. Refuse any submission to purchase any Real Property or part thereof.
- 7.1.2. Delegate their authority, by way of resolution, to the CAO in regard to this policy as they see fit.
- 7.1.3. Declare Real Property Surplus by official resolution at a public meeting of Council prior to the Disposal of Real Property.
- 7.1.4. Approve offers of purchase and sale.
- 7.1.5. Consider the potential Disposal of unserviced Real Property as recommended.
- 7.1.6. Consider the potential Disposal of parkland or natural environment areas as recommended.
- 7.1.7. Consult with the Heritage Committee regarding the Disposal of Heritage Property and approve or disallow the same, where applicable.
- 7.1.8. Waive any section of this policy.

7.2. The **CAO** has the authority and responsibility to:

- 7.2.1. Act in a manner in which Council is responsible in regard to this policy if said authority has been officially delegated by Council.
- 7.2.2. Determine if public notice of the intent to sell Real Property is required on a case-by-case basis.
- 7.2.3. Deem that the Disposal of any Real Property shall be conducted by way of tender or quotation if it is in the best interests of the Town to do so.

7.3. The **Senior Management Team** has the authority and responsibility to:

- 7.3.1. Review list(s) of potential Surplus Real Property and provide comment, information and input as to whether the subject Real Property is eligible for Disposal, prior to presentation to Council for Surplus declaration.
- 7.4. The **Director of Planning, Development and Legislative Services** has the authority and responsibility to:
  - 7.4.1. Subject to consultation with Senior Management and relevant third parties (such as utilities), bring forward recommendations to Council about declaring Real Property Surplus and seek Council's authority to offer the Real Property for Disposal.
  - 7.4.2. Ensure property Disposals are in keeping with this policy and make recommendations to Council.
  - 7.4.3. Bring any circumstances of potential Disposal of unserviced Real Property to Council for consideration.
- 7.5. **Staff** have the authority and responsibility to:
  - 7.5.1. Abide by the *Disposal of Surplus Real Property Policy*.

## **8. REFERENCES AND RELATED DOCUMENTS**

- 8.1. *Municipal Act, 2001*
- 8.2. *Expropriations Act, 1990*
- 8.3. *Planning Act, 1990*
- 8.4. *Procurement Policy*
- 8.5. *Execution of Agreements, Leases and Contracts Policy*
- 8.6. *Provision of Notice to the Public Policy*