


POLICY

	Policy:	DISPOSITION OF SURPLUS TOWN PROPERTY	Policy No.:	ECDEV-RP-POL01
	Department:	Economic and Community Development	By-Law No.:	TBD
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1. POLICY STATEMENT

- 1.1. The Corporation of the Town of Amherstburg is committed to open, transparent, consistent and equitable activities in relation to the disposition of surplus Town land 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 land. To establish 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 disposition of Town land, 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, R.S.O. 1990, Chapter E.26*.
- 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 land 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 road or road allowance is conveyed to an abutting property owner and the transaction is completed with Council direction.
- 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.

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. **Chief Administrative Officer (CAO)** is the Chief Administrative Officer for the Corporation of the Town of Amherstburg, which includes the roles and responsibilities as laid out in Section 229 of the *Municipal Act, 2001*.
- 4.4. **Clerk** is the Municipal Clerk for the Corporation of the Town of Amherstburg, which includes the roles and responsibilities as laid out in Section 228 of the *Municipal Act, 2001*.
- 4.5. **Contract** means a legally binding agreement between two or more parties.

- 4.6. **Council** refers to the current elected Council for the Corporation of the Town of Amherstburg. This includes, as an entirety, the Mayor, Deputy Mayor and Councillors.
- 4.7. **Director** is the person responsible for direction and operational control of a division as defined on the Town's organizational structure.
- 4.8. **Disposal** is the sale, exchange for other lands or the lease for a specified term any portion of the Town's surplus property, but does not include the granting of an easement or a right-of-way.
- 4.9. **Designated Signing Authority** means the person or people authorized to execute legally binding contracts on behalf of the Town of Amherstburg.
- 4.10. **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).
- 4.11. **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.
- 4.12. **Land** includes any property owned by the Town of Amherstburg that includes any features and structures located thereon.
- 4.13. **Lease** is a method of financing and acquisition which binds the Town to a stream of future payments. Council approval is required to enter into a lease, along with, or subsequent to, the acquisition approval. Entry into a lease agreement by the Town shall be subject to the provisions of the *Municipal Act, 2001* and the regulation thereto.
- 4.14. **Manager** reports directly to a Director (or the CAO in some instances) and who is responsible for a department within a division of the Corporation, as defined on the Town's organizational structure.
- 4.15. **Market Value** means the most probable price which 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.
- 4.16. **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.
- 4.17. **Notice** means the notification provided to the public in accordance with the provisions of this policy.
- 4.18. **Other Land Interests** is the granting of an interest in land that is not a disposal, such as easement, leases, encroachments, etc.

- 4.19. **Real Property** means land and buildings which are owned by the Town of Amherstburg, including Viable and Non-Viable property.
- 4.20. **Sale** means an agreement to purchase property for an agreed upon sum of money or declared equivalent in exchange for title to the property.
- 4.21. **Senior Management Team (SMT)** is comprised of the Chief Administrative Officer and the Directors. If a Director is unavailable, a delegate may be assigned.
- 4.22. **Special Project** means land to be used for development or other opportunity, as determined by Council.
- 4.23. **Surplus Property** means Real Property located in the Town of Amherstburg and owned by or for the benefit of the Town for which the 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 requirement of the Town.
- 4.24. **Town** is the Corporation of the Town of Amherstburg.
- 4.25. **Treasurer** is the Treasurer for the Corporation of the Town of Amherstburg, which includes the roles and responsibilities as laid out in Section 286 of the *Municipal Act, 2001*.
- 4.26. **Viable Land** a parcel of land which, on its own, would be eligible for a building permit.

5. **INTERPRETATIONS**

- 5.1. Any reference to 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 sale 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 their authority, by way of resolution, to the CAO in regards to this policy.

6.2. **Standardization**

- 6.2.1. It will be the policy of the Town of Amherstburg, wherever possible, to standardize the disposition of surplus property to allow for:
 - 6.2.1.1. Divest from real property with little to no value to the Town.
 - 6.2.1.2. Maximize asset potential.
 - 6.2.1.3. Promote growth and development within the Town of Amherstburg.
 - 6.2.1.4. Fair and competitive bidding on real property.
 - 6.2.1.5. Consistent and streamlined systems relating to the disposition of real property.

6.3. **Declaration Of Surplus Property**

- 6.3.1. The Director of Economic and Community Development shall ensure that all utilities and third-parties who have infrastructure, or other assets, located on the subject property are consulted, prior to the declaration of surplus property.
- 6.3.2. The Director of Economic and Community Department shall obtain comments from Town departments regarding the resulting effects on operations prior to the 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 sale of property is for non-viable properties and land exchanges. This will be determined and approved by the CAO.
- 6.4.3. If the Town was provided an Expression of Interest to purchase Town property, or the sale is conducted through direct negotiation, public notice of the intent to sell the subject property may not be provided. This will be determined and approved by the CAO.

6.5. **Property Values**

- 6.5.1. Prior to the negotiation of sale of real property, an appraisal shall be obtained.
- 6.5.2. Disposal will be at minimum the appraised value, or equivalent consideration, unless Council directs otherwise.

6.6. **Appraisals**

- 6.6.1. Appraisals shall be obtained 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 property appraisals shall be conducted in accordance with the Town's Procurement Policy.

6.7. **Land Surveys**

- 6.7.1. Before the disposition 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 CAO may waive this requirement if an existing survey is available.

6.8. **Method Of Disposal**

6.8.1. **Public Advertisement**

- 6.8.1.1. Subject to direction from Council, viable property will be listed by a real estate brokerage firm or independent real estate agent acquired by the Town for real property transactions. The acquisition of real estate brokers or agents to dispose of real property shall be conducted in accordance with the Town's Procurement Policy.
- 6.8.1.2. All viable land will be marketed for a period of a 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. Lands that are landlocked may be sold directly to the abutting property owner(s) provided the land is sold at no less than the market value. If more than one abutting property owner wishes to acquire the landlocked property, the Director of Economic and Community Development will contact the abutting owners to determine whether a consensus can be arrived at in splitting the property amongst 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 whole landlocked parcel.

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 at the value established by the Director of Economic and Community Development, taking into consideration all relevant factors, but in any event for no less than on a cost-recovery basis. If more than one abutting property owner wishes to acquire the non-viable land, the Director of Economic and Community Development will contact the abutting owners to determine whether a consensus can be arrived at in splitting the property amongst 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 whole landlocked parcel.

6.8.2.3. If the Town receives an expression of interest to purchase Town property, the Town may directly negotiate the sale of said property with the potential buyer upon Council's approval without having to provide public notice.

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 Economic and Community Development will confirm whether there is any right for a former owner to repurchase the land under the *Expropriations Act* and advise Council of same by way of Council report.

6.9. **Land 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 Town Solicitor, 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 Land**

- 6.10.1. Land 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 land, the Director of Economic and Community Development will bring the issue to Council for consideration.

6.11. **Parkland And Natural Environment Areas**

- 6.11.1. There will be no disposal of parkland or natural environment areas without Council approval.
- 6.11.2. Subject to section 6.11.1, disposal of parkland and other land having significant natural features requires satisfaction of the Official Plan requirements and, if applicable, the implementation of appropriate measures to protect the significant natural features.

6.12. **Heritage Properties**

- 6.12.1. There will be no disposal of land under Part IV or Part V of the *Ontario Heritage Act* (a "Heritage Property") without Council's prior approval. The local Heritage Committee will be consulted of any Heritage Property being made available for sale.

6.13. **Sale Price**

- 6.13.1. A minimum reserve sale price shall be determined by the Director of Economic and Community Development based on the appraised value plus estimated costs incurred by the Town to dispose of surplus property that include but are not limited to cost of appraisal, survey, realty fees, legal fees, improvements, etc.
- 6.13.2. The accepted sale price shall not be lower than the reserve price as determined in section 6.13.1 unless Council determines that it is in the best interest of the Town to do so.

6.14. **Offers Of Purchase**

- 6.14.1. 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 Economic and Community Development, and shall be the greater of \$1,000 or 5% of the offered purchase price.

- 6.14.2. Unless otherwise directed by Council, all disposals will be on a cash basis. If the Director of Economic and Community Development is of the opinion that exceptional and specific circumstances exist that would warrant consideration of a disposal on something other than a cash basis, the Town Solicitor shall be consulted. If the Town Solicitor concurs 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.

6.15. **Financial Responsibilities**

- 6.15.1. The purchaser shall be responsible for all costs incurred to the Town attributable to the sale of the subject property. This includes, but is not limited to legal costs, surveys, plans, studies, report costs, appraisals, encumbrances, advertising, improvements and administrative fees.
- 6.15.2. Should expenses be incurred by the Town for the intention to dispose of real property, but efforts do not result in a sale, the expenses shall be paid from the Town's Lifecycle Reserve.
- 6.15.3. All proceeds from the disposition of land shall be deposited into the Town's Lifecycle Reserve.

6.16. **Reporting**

- 6.16.1. When Council is presented with a report considering the declaration of property to be surplus, the report shall include at a minimum:
- 6.16.1.1. A description, location, and sketch of the subject property and its current uses.
- 6.16.1.2. The reason why the property should be declared surplus to the Town's needs.
- 6.16.1.3. Associated risk with selling/not selling the surplus property.
- 6.16.1.4. Persons, corporations, authorities, local boards and bodies to whom should be contacted and notice given (other than general public notice).
- 6.16.1.5. Whether an Expression of Interest has been provided for the subject property and details provided therein.
- 6.16.1.6. Recommendations as to method of sale.
- 6.16.1.7. Recommendations to terms and conditions of sale.

- 6.16.2. When Council is presented with a report to consider an offer to purchase, the report shall include at a minimum:
 - 6.16.2.1. A summary of the process to offer the land for sale and results thereof.
 - 6.16.2.2. The potential purchaser and offered price for the subject property.
 - 6.16.2.3. Proposed future use of the lands.
- 6.16.3. Discussions regarding the disposition of real property may be discussed in a closed in-camera session of Council as defined in the *Municipal Act, 2001*.
- 6.16.4. Any decisions to be made by Council as a result of discussions regarding the disposition of real property in closed sessions shall be reported out in a public session by official resolution.

6.17. **Authorizing By-Law**

- 6.17.1. Any sale of Town property shall be ratified by a By-law authorizing the sale.

7. **RESPONSIBILITIES AND AUTHORITIES**

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

- 7.1.1. Act in the manner in which Council is responsible in regards to this policy if said authority has been officially delegated by Council.
- 7.1.2. Determine if public notice of the intent to sell non-viable lands is required on a case-by-case basis.
- 7.1.3. Deem that the sale of any property shall be conducted by way of tender or quotation if it is in the best interests of the Town to do so.

7.2. **Director of Economic and Community Development** has the authority and responsibility to:

- 7.2.1. Periodically review listings of all Town-owned land to determine which property may be surplus to the Town's needs.
- 7.2.2. Circulate notice of potential surplus lands to the SMT for comment and input, prior to Council deeming the property surplus.
- 7.2.3. Circulate notice of potential surplus lands to utilities and/or any other third party having infrastructure or other assets located on the subject property for comment and input, prior to Council deeming the property surplus.

- 7.2.4. Make recommendations to Council about declaring property surplus and seek Council's authority to offer the land for sale.
- 7.2.5. Pursue property disposals per this policy and make recommendations to Council.
- 7.2.6. Obtain qualified real estate brokers or agents to assist, as appropriate, in the disposition of land in accordance with the Procurement Policy.
- 7.2.7. Obtain independent property appraisals for land in keeping with any requirements imposed by any applicable legislation, By-law or this policy, and in accordance with the Procurement Policy.
- 7.2.8. Contact abutting property owners to non-viable or landlocked property if more than one abutting property owner wishes to acquire said property to determine whether a consensus can be arrived at in splitting the property amongst interested abutting owners. If a consensus cannot be reached, the Director of Economic and Community Development will request offers from all interested abutting owners for the subject parcel.
- 7.2.9. Confirm whether there is any right for a former owner to repurchase land under the *Expropriations Act* and advise Council of same.
- 7.2.10. Determine the appropriate amount of the deposit that shall accompany an Agreement of Purchase and sale. The amount shall be no less than \$1,000.
- 7.2.11. Consult the Town Solicitor if exceptional and specific circumstances exist that would warrant contemplation of a disposal on something other than a cash basis and present to Council for consideration.
- 7.2.12. Bring any circumstances of potential disposition of unserviced land to Council for consideration.
- 7.2.13. Report the details of any property disposal to the appropriate departments and to the Treasurer for the purposes of maintaining accurate corporate records.
- 7.2.14. Initiate changes to existing policies, procedures, or recommendations addressing the disposition of land in cooperation with the Manager of Special Projects.
- 7.2.15. Prepare and maintain all data bases and records regarding Town properties.
- 7.2.16. Provide the Clerk with final copies of any and all agreements in regards to real property and the sale of surplus property.

7.3. **SMT** has the authority and responsibility to:

7.3.1. Review notices of potential surplus land dispositions and provide comment, information and input as to whether the subject property is eligible for disposition, prior to presentation to Council for surplus declaration.

7.4. **Manager of Special Projects** has the authority and responsibility to:

7.4.1. Coordinate changes to existing policies, and the establishment and maintenance of procedures addressing the disposition of land with the Director of Economic and Community Development.

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

7.5.1. Refuse any submission to purchase any property or part thereof.

7.5.2. Delegate their authority, by way of resolution, to the CAO in regards to this policy as they see fit.

7.5.3. Declare property surplus by official resolution at a public meeting of Council prior to the disposal of real property.

7.5.4. Approve offers of purchase and sale as presented by the Director of Economic and Community Development.

7.5.5. Consider potential disposition of unserviced land as presented by the Director of Economic and Community Development.

7.5.6. Approve the disposition of parkland or natural environment areas.

7.5.7. Consult with the Heritage Committee regarding the disposition of Heritage Property and approve or disallow same.

7.5.8. Waive any section of this policy.

8. **RECORDS AND INFORMATION**

8.1. Purchasing records will be retained in accordance with legislative requirements, guidelines of governing and professional bodies, and the Town's Record Retention By-law.

8.2. The Town is subject to the *Municipal Freedom of Information and Protection of Privacy Act*. Subject to provisions of this Act, the Town will use reasonable efforts to safeguard the confidentiality of any information identified by a supplier as confidential, but shall not be liable in any way whatsoever if such information is disclosed.

8.3. Purchasing files shall be maintained by the Administration to monitor and review the effectiveness of this policy and associated procedures, and to ensure compliance to this Policy.

9. **PROCEDURES**

- 9.1. Administration has the authority to establish procedures for implementing this policy and to amend those procedures as required in the best interests of the town with the concurrence of the CAO and Town Solicitor (if required).