

**THE CORPORATION OF THE TOWN OF HAWKESBURY**

**BY-LAW N° 22-2012**

**A by-law to establish a property disposal policy  
for the sale and disposition of land by the  
Corporation of the Town of Hawkesbury**

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(consolidated with By-law N° 64-2014)

**WHEREAS** section 270(1) of the *Municipal Act, 2001* as amended requires a municipality to adopt and maintain policies regarding the sale and other disposition of land;

**AND WHEREAS** section 9 of the *Municipal Act, 2001* states that a municipality has the capacity, rights, powers and privileges of a natural person for the purposes of exercising its authority under the *Municipal Act, 2001* or any other Act;

**AND WHEREAS** section 106 of the *Municipal Act, 2001* states that a municipality shall not assist directly or indirectly any manufacturing business or other industrial or commercial enterprises through the granting of bonuses for that purpose;

**AND WHEREAS** the council of the Corporation of the Town of Hawkesbury deems it expedient to review its by-law on the disposal of property adopted back in 1995.

**NOW THEREFORE** council of the Corporation of the Town of Hawkesbury enacts as follows:

1. **THAT** schedule "A" "Policy governing the sale and other disposition of land" annexed hereto is forming part of this by-law.
2. **THAT** schedule "B" being different sections of the *Municipal Act, 2001* in effect at the date of passing of present by-law annexed hereto is forming part of this by-law.
3. **THAT** By-law N° 100-95 is hereby repealed.
4. **THAT** this by-law and attached policy shall come into force upon its passing.

**READ A FIRST, SECOND AND ADOPTED UPON THIRD READING  
THIS 12<sup>th</sup> DAY OF MARCH 2012.**

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René Berthiaume, Mayor

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Christine Groulx, Clerk

## Schedule "A"

### **POLICY GOVERNING THE SALE AND OTHER DISPOSITION OF LAND**

#### **1. PURPOSE OF POLICY**

- 1.1. This policy is intended to govern the sale and disposal of property by the Corporation of the Town of Hawkesbury. Property disposal may be initiated in response to inquiries from the public or as a result of internal municipal actions.
- 1.2. It is also intended to ensure the disposal of surplus land in an open and transparent process and that it is done in a fair, reasonable and in the best interest of the Town.

#### **2. DEFINITIONS**

- 2.1. "Act" means the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended from time to time;
- 2.2. "Appraisal" means a written opinion or letter of opinion as to the consideration that the land or property might be expected to realize if sold on the open market by a willing seller to a willing buyer;
- 2.3. "Chief Administrative Officer" means the Chief Administrative Officer of the Corporation of the Town of Hawkesbury;
- 2.4. "Clerk" means the Clerk of the Corporation of the Town of Hawkesbury;
- 2.5. "Council" means the council of the Corporation of the Town of Hawkesbury;
- 2.6. "Disposal" means the sale, transfer or conveyance of land, exchange for other lands, or the lease of land for a term exceeding 21 years, of any portion of the town's surplus land but does not include the granting of an easement or a right-of-way. It does not include a quit claim deed made by the Town for the purpose of correcting or clarifying titles or boundaries of its land or of land not owned by the Town;
- 2.7. "Local board" means a local board defined in the *Municipal Act, 2001*, as amended;
- 2.8. "Town" means the Corporation of the Town of Hawkesbury;

- 2.9. “Land” or “Property” means lands and premises or any proprietary interest in land which is owned or held by the Town in fee simple or otherwise, including, without limiting the generality of the foregoing, all easements, rights-of-way and leasehold interests of the Town, and lands owned under an agreement of purchase and sale. For greater certainty and not to restrict the generality of the foregoing definition, land includes those lands of the Town which are parks, parking lots, open space, buildings and lands laid out or intended to be laid out as highways.

### 3. EXEMPTIONS

- 3.1 This policy does not apply to the following classes of property disposal:
- 3.1.1. Disposals of land pursuant to section 110 of the *Municipal Act, 2001*, as amended (municipal capital facilities);
  - 3.1.2. Disposals as part of a municipal tax sale pursuant to Part XI of the *Municipal Act, 2001*, as amended (sale of land for tax arrears);
  - 3.1.3. Disposals conducted pursuant to a *Planning Act* application or approval, which disposal is governed by a consent agreement, subdivision agreement, or site plan agreement, land 0.3 meters or less in width acquired in connection with an approval or decision under the *Planning Act*;
  - 3.1.4. Disposals to the Crown in the Right of Ontario or Canada, or any government agency or authority;
  - 3.1.5. Disposals of an easement to a public utility;
  - 3.1.6. Land that does not have direct access or the size of said land does not allow the construction of a building respecting the Zoning By-law or the Building Code, if sold to the owner abutting said land. (replaced by By-law N° 64-2014)

### 4. SALE OF LAND PROCEDURES

- 4.1. The Town may dispose of property at its own initiative or upon the receipt of a written request from an applicant.
- 4.2. A written request from an applicant shall be submitted to the Chief Administrative Officer.
- 4.3. Upon direction of council or receipt of a written request, the Chief Administrative Officer will circulate the land disposal direction or

request to the appropriate municipal staff to obtain their comments on whether the property may be considered surplus to the Town's need and/or any other issues which would need to be addressed prior to or in conjunction with the potential land disposal. If the Chief Administrative Officer feels that the written request should not be circulated, the Chief Administrative Officer will present the written request to council for a final determination on the merits of a circulation.

- 4.4. Following a circulation, the Chief Administration Officer shall prepare a report to council based on the comments received, including a recommendation as to whether or not the lands should be considered surplus and identification of any other issues.

## **5. PROCEDURES AND ADMINISTRATION**

- 5.1. Unless an exemption is provided in this by-law, before the disposal of any land, council shall:
  - 5.1.1. Declare the land to be surplus to the needs of the Town by a resolution passed at a meeting open to the public;
  - 5.1.2. Value the land in accordance with section 6 of this by-law, and;
  - 5.1.3. Give notice to the public in accordance with section 7 of this by-law.
- 5.2. The passage of a resolution declaring the land to be surplus does not obligate the Town to dispose of such lands and such a declaration may be rescinded by resolution at any time prior to the completion of the disposal.

## **6. APPRAISAL**

- 6.1. Where land needs to be valued, the Chief Administrative Officer shall obtain at least one appraisal from a qualified appraiser who does not have an interest in the disposal or purchase of the land.
- 6.2. Notwithstanding the foregoing, the following classes of land are exempt from the requirement to obtain an appraisal prior to the disposal:
  - 6.2.1. Closed highways if sold to an owner of land abutting the closed highways and the size of said highways does not allow the construction of a building respecting the zoning by-law and the Building code;

- 6.2.2. Land formerly used for railway lines if sold to an owner of land abutting the former railway land;
- 6.2.3 Land sold or transferred to another municipality;
- 6.2.4 Land sold or transferred to the Crown in right of Ontario or Canada or their agents;
- 6.2.5 Land sold or transferred to a local board including a school board or conservation authority;
- 6.2.6 Land repurchased by an owner in accordance with section 42 of the *Expropriation Act* as amended;
- 6.2.7 Easement granted to public utilities or to telephone companies.

## 7. NOTICE

- 7.1. Subject to sections 3 and 7.4, before disposing of any land, the Clerk shall publish a notice of the intended disposal in a local newspaper to give the public reasonable notice of council's intention and by posting notice on the Town's Website.
- 7.2. This notice shall be given at least fourteen (14) days prior to the meeting where this matter will be discussed:
  - 7.2.1. It shall include the legal description of the land, municipal address and/or location map which the Clerk deems sufficient to identify the lands;
  - 7.2.2. The notice shall specify that anyone wishing to comment on the proposed disposal may do so by delivering such comment in writing to the Clerk;
  - 7.2.3. The final date for submitting such comments shall be specified in the notice. All comments shall be submitted to council;
  - 7.2.4. The date on which the resolution declaring the land to be surplus was or will be passed;
  - 7.2.5. The notice shall further have the following statement: "The Town reserves the right to reject any or all tenders received and the highest or any tender will not necessarily be accepted".
- 7.3. Notwithstanding sections 3 and 7.4, council may direct the Clerk to give notice of publication where it is deemed in the public interest to do so.

- 7.4. Where land proposed to be disposed of falls within one of the categories listed in section 6.2; notice to the public is not required.

## **8. COSTS**

The Town may require the purchaser to be solely responsible for all costs incurred by the Town to dispose of any property, which costs may include the following: legal survey, appraisal, removal of encumbrances, advertising, improvements and administration fees if not sold by registered real estate agent and/or agency.

## **9. METHODS OF DISPOSAL**

Land may be disposed by public tenders, public proposals, by listing with a real estate agent or agency or in such other appropriate manner as may be determined by council.

### **9.1. Disposal by public tenders**

If the land is to be disposed of by public tender, the request for tenders shall be published in accordance with section 7. In addition, the notice may also be published in an electronic tendering site or in a newspaper of a larger circulation if, in the Chief Administrative Officer's opinion, the land to be disposed of is in a strategic location or of a great interest.

9.1.1. The notice shall, in addition, state the minimum bid requested which shall not be less than the appraised value plus any additional costs that have been prior determined by council, if applicable;

9.1.2. The delay for the closing of tenders shall not be less than 21 days from the day the notice is published;

9.1.3. Tenders shall be accompanied by a deposit of 10% in the form of a certified cheque;

9.1.4. Tenders shall be submitted on the prescribed form as shown on Schedule "C";

9.1.5. Tender shall be delivered in a sealed envelope to the Clerk's office by the date and time specified on the notice and they shall be opened in public at the time prescribed on the notice.

### **9.2. Disposal by public proposals**

- 9.2.1. If the land to be disposed of is suitable for a major redevelopment, it shall be disposed of by public proposals. The request for proposals (RFP) shall be published in accordance with section 7 and also in an electronic tendering site. It may further be published in a newspaper of a larger circulation if, in the Chief Administrative Officer's opinion, the development potential is important;
- 9.2.2. A RFP document enumerating the conditions and minimum criteria shall be drafted. The Chief Administrative Officer may be authorized by council to seek the assistance of any professionals to draft the RFP document. Because tenders are evaluated on an overall project, not only on the price, the assessment method and review committee shall be clearly identified in the RFP document;
- 9.2.3. The RFP document may or not establish a minimum bid which shall be determined in advance by council. The council may determine a value less than the appraised value if past experiences have proven that the appraised value has not been successful;
- 9.2.4. Tenders shall be accompanied by a bid bond issued by a Canadian Surety Company of 10% of the proposed bid or a certified cheque;
- 9.2.5. Tenders shall be submitted on the prescribed form as shown on Schedule "C";
- 9.2.6. Tender shall be delivered in a sealed envelop to the Clerk's office by the date and time specified on the notice and they shall be opened in public at the time prescribed on the notice. However, only the name of tenderers will be given publicly, the content of the proposals shall remain confidential until a formal agreement is concluded.

**9.3. Disposal by listing with a real estate agent or agency**

Should council determine to engage a real estate agent or agency to dispose of the land, the following shall apply:

- 9.3.1. Costs incurred or anticipated to dispose of the land such as legal fees, commissions, survey fees, valuation fees, encumbrances, advertising and improvements shall be determined;
- 9.3.2. A listing price shall be determined which shall not be less than the appraised value plus the additional costs referred to in

section 9.3.1 above;

9.3.3. The Chief Administrative Officer shall be authorized to sign the listing agreement;

9.3.4. The offers shall be submitted to the Chief Administrative Officer on a standard offer to purchase form or document drafted by a lawyer;

9.3.5. The Chief Administrative Officer may in its sole and absolute discretion prepare and present counter offer(s);

9.3.6. All final offers shall be submitted to council for approval of the sale price.

## **10. DISPOSAL OF INDUSTRIAL LAND**

10.1. Industrial land owned by the Town may be disposed of by direct negotiation in the following situations:

10.1.1. If the land to be disposed of is for the purpose of the construction thereon of a building or structure for a detached industrial building;

10.1.2. If the land to be disposed of is for the purpose of the extension or enlargement of an existing industrial building or structure erected or to be erected upon land of the purchaser abutting the land;

10.1.3. If the land to be disposed of is for the purpose of a use ancillary to a building or structure erected or to be erected upon land of the purchaser abutting the land.

10.2. The sale price shall be not less than the appraised value of the land plus any additional costs that have been determined by council, if applicable.

10.3. The notice requirements for any of the situations enumerated in 10.1 are withheld.

10.4. Before the disposal transaction is finalized, an agreement shall be negotiated pertaining among other things to the delay of completion of the agreed upon construction.

10.5. The Town shall have the right to reconvey the land if the agreement is not respected by the purchaser. The reconvey price shall be 90% of the original purchase price and all legal fees shall be born by the purchaser.



- 10.6. The purchaser shall not within 10 years have the right to dispose of the land in full or in part without first obtaining the consent of the Town. The Town may give its consent or may require the purchaser to reconvey the land as per subsection 10.5.

## **11. TERMS OF DISPOSITION**

- 11.1. Upon approval or acceptance of the terms and conditions of a disposal by council, the agreement of purchase and sale and any ancillary documents shall be prepared in consultation with the Town's solicitor, as required.
- 11.2. Prior to completion of the disposal of lands, council shall adopt a by-law that includes the following information:
- 11.2.1. Date of the resolution declaring the land surplus;
  - 11.2.2. The final sale price;
  - 11.2.3. The purchaser's name;
  - 11.2.4. Authorization for the mayor and the Clerk to take all actions and execute all documentation required to finalize the disposal.

## **12. ERRORS OR OMISSIONS**

- 12.1. It is acknowledged that any error or omission in following the procedures and policies, which error or omission was not the result of bad faith on behalf of the Town will not render such disposal invalid or void.

**SCHEDULE "B"**

**EXCERPT OF MUNICIPAL ACT, 2001**

**SCHEDULE "C"**

**Corporation of the Town of Hawkesbury  
Sale of Surplus Land**

**Tender to purchase**

Property declared surplus by the Town of Hawkesbury

TO: Clerk  
Town of Hawkesbury  
600 Higginson Street  
Hawkesbury, Ontario  
K6A 1H1

RE: Sale of \_\_\_\_\_  
description of land

I/We hereby tender to purchase the above mentioned land for the amount of

\$ \_\_\_\_\_

(\_\_\_\_\_ dollars).

I/We understand that this tender shall be received by the Clerk's office no later than 3:00 p.m. local time on \_\_\_\_\_, 20\_\_ and that in the event of this tender being accepted, I/we shall be notified of its acceptance.

I/We enclose a deposit in the form of a certified cheque/bank draft/money order for the sum of \$\_\_\_\_\_ in favour of the Town of Hawkesbury representing 10% or more of the tendered amount which will be forfeited if I/we do not pay the balance of the tendered amount, any land transfer tax and HST if applicable within fourteen calendar days of a representative of the Town of Hawkesbury notifying me/us that I/we are the successful bidder.

I/We understand that the Town has the right to reject any or all tenders received and the highest or any tender will not necessarily be accepted and therefore the Town declines any financial and legal liability toward me/us. Furthermore, the Town may decide to interrupt the disposal procedures without having to justify its decision.

I/We acknowledge that \_\_\_\_\_ addendum have been issued and are a part of the RFP document, if applicable.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

I have the authority to bind the company (if applicable)