



CORPORATE POLICY

Sub Topic: Sale of Land

Policy No. LEGAL.1-01

Topic: Land Acquisition and Sale

Applies to: All Employees & Elected Officials & all real estate agents and brokers acting on behalf of the Town on real property sales or dispositions

Section: Legal Services

Council Adoption Date: January 21, 2013

Effective Date: January 21, 2013

Revision No: Date:

Policy Statement & Strategic Plan Linkages

This policy applies to the sale and disposition of real property by the Corporation of the Town of Newmarket (the "Town"). It applies to: (1) all Town employees, (2) elected officials, and (3) all agents acting on behalf of the Town on real property matters, including any real estate brokers authorized to dispose of real property on behalf of the Town. The policy aligns with the well-equipped & managed branch of the strategic plan, and reflects the core values of accountability and accessibility.

Purpose

The primary purpose of this Policy is to ensure compliance by the Town with section 270(1) of the *Municipal Act, 2001*, as amended, which requires municipalities to adopt policies regarding the sale and other disposition of municipally owned land. The secondary purpose is to establish a consistent, transparent and accountable procedure to be followed in the disposition of real property assets by the Town.

Definitions

In this Policy, the following terms shall have the following meanings:

Appraisal: means a written valuation of the fair market value of land, performed by an independent, certified appraiser that is satisfactory to the Municipal Solicitor;

Disposition: means the sale, transfer, conveyance or exchange of the fee simple interest in land or the granting of a lease of 21 years or longer by the Town, but does not include the granting of a lease for less than 21 years, the granting of a license, or the granting or release of an easement or right-of-way by the Town;

Land: means real property owned by the Town and includes any building located thereon;

Surplus: means property that the Town does not require to meet its present or anticipated future needs; and

Town: means the Corporation of the Town of Newmarket.

Procedures

General Conditions Governing the Disposition of Land

Before any disposition of land by the Town, the following actions shall occur, unless an exemption applies:

- 1) The land shall be declared surplus by a resolution of Council;
- 2) At least one appraisal shall be obtained, if required under this Policy;
- 3) The method by which the land is to be disposed of shall be approved by Council; and
- 4) Notice of the proposed disposition shall be provided to the public.

The following procedures shall apply to the disposition of land by the Town:

Step One: Declaration of Surplus Land

- 1) Prior to the disposal of land by the Town, Council shall declare the land to be surplus in the following manner:
 - (a) Notice of lands considered to be surplus shall be circulated to all departments by Legal Services for comment in accordance with the Town's Delegation By-law.
 - (b) Once departmental comments have been received, a report shall be submitted to Council recommending: (1) whether the land should be declared surplus (2) the suggested method of disposing of the land, and (3) requesting authority for staff to negotiate the terms and conditions of the proposed disposition.
 - (c) Provided that Council approves a recommendation to declare land surplus, a Resolution to declare the property surplus will be submitted to Council by Legal Services.
- 2) The following classes of land shall be exempt from the requirement to be declared surplus prior to sale:
 - (a) Land that is transferred to another government body or public utility in exchange for other land for road allowance or road widening purposes within the geographic limits of the Town of Newmarket.
 - (b) Land that is transferred by the Town to a developer through the site plan or subdivision development process in exchange for land of equal or greater value.
 - (c) Land acquired as a road widening or part of a road widening in connection with an approval or decision under the *Planning Act*, as amended, including road widening lands being conveyed, in whole or in part, back to the original owner of the land or their successor in title.

- (d) Land being expropriated from the Town by another governmental body pursuant to the *Expropriations Act* or any other legislation.
- (e) Closed highways, if sold to an owner(s) of land abutting the closed highways.
- (f) Land that does not have direct access to a highway if sold to the owner(s) of land abutting that land.
- (g) Land conveyed to a person by the Town as part of the settlement of litigation proceedings.
- (h) Lands formerly used for railway lands, if sold to an abutting owner.

Step Two: Obtaining an Appraisal

- 3) Prior to the disposal of land by the Town, at least one appraisal of the fair market value of the land shall be obtained by Legal Services.
- 4) As set out in Town of Newmarket By-law 2007-114, as amended or any successor by-law thereto, if it would not be practical or economical to obtain an appraisal as determined by staff, or a minimum sale price has been approved by Council, then an appraisal will not be required. Circumstances in which it would not be practical or economical to obtain an appraisal include but are not limited to when the estimated value of the land to be disposed of is less than \$5,000.00, or when the cost of obtaining the appraisal would be more than 50% of the estimated value of the land.
- 5) When an appraisal is obtained by Legal Services, it shall state the criteria used to determine value within the appraisal.
- 6) Where there is a variance of greater than 10% between the appraised fair market value of land and the proposed sale price of the land, and the proposed sale price is less than the appraised fair market value of the land, the variance shall be approved by Council. Where there is a variance of 10% or less between the appraised fair market value of land and the proposed sale price of the land and the proposed sale price is less than the appraised fair market value of the land, the variance shall be approved by the CAO and reported to Council.
- 7) An appraisal shall remain current for a period of two years from the date of the appraisal. In the event that land is not disposed of by the Town within two years of the date of the most recent appraisal obtained by the Town, an updated appraisal will be required.
- 8) Notwithstanding that certain lands are exempted from the requirement for a declaration of surplus prior to disposition as set out in Paragraph 2 of this Policy, an appraisal shall be required for those lands prior to any disposition, with the exception of lands to which Paragraph 4 applies.

Step Three: Negotiation of Terms and Conditions and Agreement of Purchase and Sale

- 9) Once staff have negotiated the key terms and conditions of the disposition, a Report shall be brought forward to Council for approval of the disposition, unless an exemption applies.

- (a) Once Council has approved the disposition, including the key terms and conditions of the disposition, an Agreement of Purchase and Sale shall be prepared by staff. The Municipal Solicitor and the CAO shall have the authority to negotiate any additional terms and conditions in the Agreement of Purchase and Sale with the purchaser, provided that the additional terms and conditions protect the rights and interests of the Town.
 - (b) The CAO shall have the authority to approve the final terms and conditions in the Agreement of Purchase and Sale on behalf of the Town and execute the Agreement of Purchase and Sale on behalf of the Town.
- 10) The following minor land dispositions shall be exempt from the requirement to receive Council approval of the disposition:
- (a) Agreements to convey lands originally transferred to the Town as a road widening(s) in connection with an approval or decision made under the *Planning Act* back to the original owner of the land, or their successor in title, either in whole or in part;
 - (b) Land that is transferred to another government body or public utility in exchange for other land for road allowance or road widening purposes within the geographic limits of the Town of Newmarket.
 - (c) Land that is transferred by the Town to a developer through the site plan or subdivision development process in exchange for land of equal or greater value.
- 11) In the event that an Agreement of Purchase and Sale is required for a disposition of land, and the disposition of land does not require the prior approval of Council under paragraph 10 herein, then the CAO shall have the authority to approve the terms and conditions of the Agreement of Purchase and Sale, and to execute same on behalf of the Town.

Step Four: Provision of Public Notice

- 12) Where an Agreement of Purchase and Sale has been executed, notice of the proposed disposition shall be given to the public as set out below.
- 13) The notice of the proposed disposition shall be given as follows:
- (a) publication in a newspaper of general circulation within the Town of Newmarket at least 14 days prior to the disposition of the land; or
 - (b) posting notice on the Town's website at least 14 days prior to the disposition of the land.
- 14) A notice of the proposed disposition shall contain the following information:
- a) the location of the land by reference to the municipal address or legal description, or both;
 - b) the name, title, and telephone number of one or more Town staff having information about the proposed disposition;
 - c) a general description of the method of disposition; and
 - d) the latest date by which enquiries may be made of any staff member described in 14(b).

15) If the land proposed for disposition is part of an unopened road allowance, in addition to the notice requirements in Paragraph 13, notice of the proposed disposition shall also be provided to all public utility and telecommunications companies, including Bell, Rogers, Enbridge and Newmarket-Tay Power.

16) Subject to Paragraph 15 of this Policy, lands that have been exempted from the requirement for a declaration of surplus prior to disposition shall also be exempted from the requirement to provide public notice of the disposition of the land.

17) Approved Methods of Disposition

a) Council may authorize staff to dispose of land by any of the following methods:

- (i) listing the land on the Multiple Listing Service (MLS) through the Town's real estate broker;
- (ii) direct advertising;
- (iii) direct negotiations with a purchaser;
- (iv) tender/RFP process; or
- (v) public auction.

18) Terms and Conditions of Disposition

(a) Regardless of which of the methods of disposition as set out in Paragraph 17 of this Policy is approved by Council, the disposition of land shall be on the terms and conditions and in a form satisfactory to the Municipal Solicitor/Director of Legal Services.

19) Compliance with Provincial Legislation

The Town shall adhere to any applicable legislative requirements governing the disposition of land at all times and, where this Policy is in conflict with the requirements of such legislation, the legislation shall supersede the provisions of this Policy and any disposition will proceed in accordance with the legislated requirements.

Proceeds of Disposition

All funds paid to the Town in transactions for the disposition of land shall be managed and accounted for by the Treasurer.

Review Period

This Policy shall be reviewed every three (3) years.

Cross References

Municipal Act, 2001, S.O. 2001, c.25, as amended.
Town of Newmarket By-law 2007-114 (the "Delegation By-law"), as amended.
Transparency and Accountability Policy CORP.1-03