

SECTION: I – COUNCIL

SUBSECTION: Accountability and Transparency

SUBJECT: Sale and Other Disposition of Land Policy

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SALE AND OTHER DISPOSITION OF LAND POLICY

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Policy Statement

The County of Perth shall dispose of surplus real property in an open and transparent manner that maximizes its social, economic and environmental return to the County.

Definitions

“Abutting owner” in the case of the disposal of a closed road or highway, an abutting owner refers to an owner, the front, rear or side of whose property is immediately beside the closed road or highway, but does not include an owner whose property touches either end of the road or the highway. With respect to any other real property disposal, an abutting owner is any owner whose real property touches the County’s real property;

“Act” means the *Municipal Act, 2001*, as amended;

“Appraisal” means a written estimate of current market valuation of the land that is satisfactory to the Chief Administrative Officer of the Corporation of the County of Perth;

“Chief Administrative Officer” means the Chief Administrative Officer of the Corporation of the County of Perth;

“Clerk” means the Clerk of the Corporation of the County of Perth;

“Council” means the Council of the Corporation of the County of Perth;

“County” means the Corporation of the County of Perth;

“Disposition” means the sale, transfer, conveyance or exchange of the fee simple interest in land or the granting of a lease for a term of twenty-one (21) years or longer, but does not include the granting of an easement or right of way, and “disposal” shall have a similar meaning;

“Land” means any real property owned by the County;

“Market value” means the highest price a willing buyer would pay and a willing seller would accept, both parties being fully informed, and the real property being marketed for a reasonable period of time;

“Meeting” has the same meaning as defined in the *Municipal Act, 2001*;

“Newspaper” shall mean a document that:

- (a) Is printed in sheet form, published at regular intervals of a week or less and is available through general circulation; and
- (b) Consists primarily of news of current events of general interest

“Non-viable real property” means real property for which a building permit cannot be granted because it is either landlocked, or it is of insufficient size and shape to permit development unless developed in conjunction with abutting land;

“Notice” means an announcement containing information about a future event;

“Real property” means land and/or buildings and all improvements thereon;

“Surplus real property” means real property that the County no longer requires to meet its current or future program or operational needs and that has been declared surplus by County Council or its delegated authority;

“Treasurer” means the Treasurer of the Corporation of the County of Perth;

“Value” means the valuation of the fair market value of land, and includes the value assigned by the Municipal Property Assessment Corporation, the opinion of value by a licensed real estate agent, or such other means as may be specifically determined as appropriate by Council or the Chief Administrative Officer;

“Valuation” means an independent appraisal or written opinion of the market value of the land by an appraiser or qualified professional;

“Viable real property” means real property for which a building permit can be granted;

“Website” means the County of Perth official website at www.perthcounty.ca

Purpose

To ensure that transparent and accountable processes are followed in the disposal of all real property and to ensure that returns are fair, reasonable and in the best interest of the County.

Application

This policy is required by section 270 of the *Municipal Act, 2001*, and applies to the sale or other disposition of real property by the County of Perth.

This policy applies to all County of Perth employees and any agents or assigns authorized to dispose of real property on behalf of the County.

Policy Requirements

1 General

- 1.1 Where real property is proposed to be disposed of, it shall first be determined to be viable or non-viable by the Chief Administrative Officer.
- 1.2 Subject to Section 1.3, real property shall be disposed of at market value.
- 1.3 Notwithstanding Section 1.2, County Council may, unless prohibited by the *Municipal Act, 2001*, authorize the disposal of real property at less than market value if, in its opinion, it is in the best interests of the County to do so.
- 1.4 All County-owned real property is a corporate asset and not an asset of any individual department. Monies received from the disposal of any real property shall be deposited to the County’s respective asset reserve account, unless otherwise directed by County Council.
- 1.5 This Policy shall not apply to the disposal of real property which is the subject of an agreement entered into by the County for the provision of municipal capital facilities pursuant to section 110 of the *Municipal Act, 2001*.

2 Conditions for the Disposal of Real Property

Unless otherwise stated in this Policy, the following conditions must be met before the disposal of any real property:

- 2.1 The real property shall be declared surplus to current or future program or operational requirements of the County; and
- 2.2 At least one (1) appraisal of the real property shall be obtained; and
- 2.3 Notice of the proposed disposal shall be provided to the public.

3 Authority to Declare Surplus

- 3.1 All real property shall be declared surplus by County Council by passing a resolution in an open meeting to declare any such real property surplus to the needs of the County.
- 3.2 Once the real property has been declared surplus the Clerk shall forward a copy of the council resolution to the Treasurer.

4 Appraisals

- 4.1 At least one (1) appraisal estimating current market value of the property shall be obtained. Appraisal reports shall remain confidential until the disposal is completed.
- 4.2 The appraised report shall come to County Council for approval to proceed.
- 4.3 Notwithstanding Section 4.1, the requirement to obtain an appraisal shall not apply to the disposal of real property for the following classes of land:
- i. land 0.3 metres or less in width, acquired in connection with an approval or decision under the *Planning Act*;
 - ii. closed highways, road and road allowances;
 - iii. land formerly used for railway branch lines if sold to an owner of land abutting the former railway land;
 - iv. land that does not have direct access to a highway if sold to the owner of land abutting that land;
 - v. land re-purchased by an owner in accordance with Section 42 of the *Expropriations Act*;
 - vi. disposal to a municipality as defined by the *Municipal Act*;
 - vii. disposal to a local board as defined in the *Municipal Affairs Act*;
 - viii. disposal to an authority under the *Conservation Authorities Act*, and
 - ix. disposal to the Crown in Right of Ontario or of Canada and their agencies

5 Notice of Proposed Disposal

- 5.1 Prior to the disposal of any real property the Clerk shall give notice of the proposed disposal to the public by one or more of the following methods:
- Posting of a “For Sale” sign on the real property in question for a period of not less than ten (10) days;
 - Advertising the real property for disposal in one newspaper or other appropriate media;
 - Posting a notice on the County’s website at www.perthcounty.ca under Public Notices.
- 5.2 No notice shall be required for real property that is re-purchased by an owner in accordance with Section 42 of the *Expropriations Act*.
- 5.3 Notice of the proposed disposal of non-viable real estate is provided to all abutting owners.

6 Methods of Sale

Depending on the nature of the land, various methods may be employed for the disposal of land, including: public auction; electronic auction; tender process; listing through the Multiple Listing Service; listing with real estate firm or broker; direct advertising; direct negotiations with an abutting property owner; other

direct negotiations when authorized by Council. County Council shall determine by resolution the method of sale of the surplus real property. Appendix "A" of this policy sets out the procedures for the specific methods of sale.

Responsibilities

County Council approval is required for the disposal of real property where the total amount exceeds the maximum amount pursuant to any delegated authority. County of Perth staff are responsible for adhering to the parameters of this policy and for ensuring the processes outlined within are followed.

Monitoring

The Chief Administrative Officer for the County of Perth shall be responsible for receiving complaints and/or concerns related to this policy. Upon receipt of such complaint and/or concern, the Chief Administrative Officer shall notify Council.

Legislative and Administrative Authorities

Section 270 of the *Municipal Act, 2001*, requires that the County adopt a policy with respect to the sale and other disposition of land

Conservation Authorities Act

Expropriations Act

Heritage Act

Municipal Act, 2001

Municipal Affairs Act

Planning Act

Enquiries

Chief Administrative Officer
County of Perth
Telephone: 519-271-0531 ext. 110

Appendix “A”

Sale and Disposition of Land Policy - Procedures for Disposal and Agreements of Purchase and Sale

I. Procedures for Disposal by Public Auction

Should the Council determine to dispose of the surplus land by public auction, the following shall apply:

- a) The Chief Administrative Officer shall be authorized to retain a licensed real estate auctioneer to conduct the auction;
- b) All costs of advertising being borne by the County on the understanding that the method and format of advertising will be agreed to by the auctioneer and approved by the Chief Administrative Officer prior to publication;
- c) The County shall maintain the right to establish a reserve bid based on the results of an appraisal and on the understanding that the reserve bid will remain confidential until the conclusion of the auction;
- d) The conditions of sale being established, in each case, by the County;
- e) The Chief Administrative Officer shall report the results of the auction to the County Council.

II. Procedures for Disposal by Electronic Auction (E-auction)

Should the Council determine to dispose of the surplus land by electronic auction, the following shall apply:

- a) All costs of advertising being borne by the County on the understanding that the method and format of advertising will be agreed to by the Chief Administrative Officer prior to publication and/or web posting;
- b) The County shall maintain the right to establish a reserve bid based on the results of an appraisal;
- c) The conditions of sale being established, in each case, by the County;
- d) The Chief Administrative Officer shall report the results of the auction to the County Council.

III. Procedures for Disposal by Public Tender

Should the Council determine to dispose of the surplus land by tender, the following shall apply:

- a) Costs incurred or anticipated for disposal of the surplus land, such as legal fees, survey fees, appraisal fees, encumbrances, advertising, and improvements, shall be established;
- b) An estimated bid price shall be established which shall not be less than the appraised value or valuation plus the additional costs referred to in Clause II a) above. Notwithstanding the foregoing, the Council may accept an amount less than the estimated bid amount;

- c) An advertisement shall be published, as per the notice requirements for the policy, including within a Newspaper or appropriate media and posted on the County's website at www.perthcounty.ca under Public Notices. The advertisement shall include a brief description of the property including a small location sketch and shall specify the final date that offers will be accepted and shall include the following statement "the highest or any offer may not necessarily be accepted";
- d) The tender documents shall be delivered in person to the Clerk by the date specified therein; and
- e) Any tender otherwise acceptable to the County shall be submitted to the Council for approval of the sale price.

IV. Procedures for Disposal by Real Estate Firm or Broker

Should the Council determine to engage a real estate firm or broker to dispose of the surplus land, the following shall apply:

- a) Costs incurred or anticipated for disposal of the surplus land such as legal fees, survey fees, appraisal fees, encumbrances, advertising, commissions and improvements shall be established;
- b) A listing price shall be established which shall not be less than the appraised value plus the additional costs referred to in Clause III a) above;
- c) The Chief Administrative Officer, or designate, shall be authorized to sign the listing agreement or agreement of purchase and sale once approved by Council;
- d) The offers to purchase the surplus land shall be submitted to the Clerk, or designate, on a standard offer to purchase form or form drafted by a lawyer and shall provide for an irrevocable period of at least twenty one (21) days;
- e) The County may make a counter offer subject to the Council approving the sale price; and
- f) All offers otherwise acceptable to the Council shall be submitted to the Council for approval of the sale price.

V. Procedures for Disposal by Direct Negotiation

Should the Council determine to negotiate directly with a landowner to dispose of the surplus land, (other than a mortgagee or chargee) who abuts the surplus land or an owner of other land in close proximity (other than a mortgagee or chargee) who claims legal interest in the property such as, but not limited to: an easement, a right-of-way, possessory title or a restrictive covenant. The following shall apply:

- a) Costs incurred or anticipated for disposal of the Surplus Land such as legal fees, survey fees, Appraisal fees, encumbrances, advertising and improvements shall be established;
- b) An estimated sale price shall be established which shall not be less than the appraised Value plus the additional costs referred to in Clause IV a) above. Notwithstanding the foregoing, the Council may accept an amount less or higher than the estimated sale price;

- c) In the event that no appraisal is obtained, as per the policy, the estimated sale price shall not be less than that referred to in Clause 2 above; and
- d) All agreements otherwise acceptable to the County shall be submitted to the Council for approval of the sale price.

VI. Direct Sale to the Public

Should the Council determine to dispose of the surplus land directly to the public, the following shall apply:

- a) Costs incurred or anticipated for disposal of the surplus land such as legal fees, survey fees, appraisal fees, encumbrances, advertising and improvements shall be established;
- b) An estimated sale price shall be established which shall not be less than the appraised value plus the additional costs referred to in Clause V a) above. Notwithstanding the foregoing, the Council may accept an amount less or higher than the estimated sale price;
- c) An advertisement shall be published, as per the notice requirements for the policy, including within a Newspaper or appropriate media and posted on the County's website at www.perthcounty.ca under Public Notices. The advertisement shall include a brief description of the property including a small location sketch and shall specify the final date that offers will be accepted and shall include the following statement "the highest or any offer may not necessarily be accepted";
- d) The Chief Administrative Officer, or designate, shall be authorized to sign the agreement of purchase and sale once approved by Council.
- e) The County may make a counter offer subject to the Council approving the sale price; and
- f) All offers otherwise acceptable to the County shall be submitted to the Council for approval of the sale price.

Agreements of Purchase and Sale

In Agreements of Purchase and Sale (the "APS") or e-auction posting for the sale of Surplus Land, the County shall include a provision which states that the Surplus Land in question is being sold strictly on an "as is, where is" basis and that, except as expressly set out in the APS, no representations or warranties of any nature or kind have been made or will be made by the County, or anyone acting on behalf of the County, whether before or after execution of the APS or closing, to or for the benefit of the purchaser with respect to the Surplus Land including, without limitation, any representation or warranty relating to soil or ground water quality in, on or under the Surplus Land.