

THE CORPORATION OF THE CITY OF WINDSOR
Office of the City Solicitor - Real Estate Division

**MISSION STATEMENT:**

"Our City is built on relationships – between citizens and their government, businesses and public institutions, city and region – all interconnected, mutually supportive, and focused on the brightest future we can create together."

LiveLink REPORT #: 16967 APM2014	Report Date: January 3, 2014
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To: Mayor and Members of City Council

Subject: New Disposal of Land Policy, Amendments to DOA By-Law 208-2008

1. RECOMMENDATION:

City Wide: Ward(s): _____

- I. THAT the Disposal of Land Policy, as attached as Appendix A, **BE APPROVED** in principle;
- II. AND THAT the Delegation of Authority Bylaw 208-2008 **BE AMENDED** as follows:
 - (a) That Schedule "A" (Property Transactions) **BE DELETED** in its entirety AND **BE REPLACED** with attached Appendix B; and
 - (b) That Section 1.30 **BE DELETED** in its entirety AND **BE REPLACED** with the following:
 - 1.30 (a) "City as Lessor" Leases and/or Assignments;
 - (b) "City as Grantor" Licenses, Easements (permanent and temporary) and Consents to Enter;
 - (c) "City as Grantee" Temporary Easements and Consents to Enter
- III. AND THAT the City Solicitor **BE DIRECTED** to prepare the necessary bylaws for:
 - a. The adoption of the Disposal of Land Policy, as attached as Appendix A, and to repeal Bylaw 247-2007; and
 - b. The amendments to the Delegation of Authority Bylaw 208-2008 as described in recommendation II.

2. BACKGROUND:

Section 270. (1) of the *Municipal Act, 2001* provides as follows:

A municipality shall adopt and maintain policies with respect to the following matters:

1. Its sale and other disposition of land.

In December 2007 City Council adopted By-Law 247-2007 "Dealings With Real Property Policy". By-Law 247-2007 was a consolidation of various by-laws, resolutions and policies, which governed the methods in which the municipality dealt with its real property.

Now that Administration has dealt with By-Law 247-2007 for several years it was felt some amendments were required to reflect Council's more recent direction and make the disposal of real property more user friendly while continuing to maintain a fair, equitable and transparent process.

3. DISCUSSION:

The following chart highlights the major differences in the current policy and the proposed policy.

Dealings With Real Property Policy	Land Disposal Policy
Deals with the sale of land predominately and briefly mentions acquisitions	Deals with the sale of land and limited interests in land
Notification of property to be sold by Council Communication	Property to be sold to be declared surplus and seek permission to offer the property for sale as per Council direction and this policy.
Civic Corner notification at time of disposal	Civic Corner notification for both surplus declaration and seeking permission to offer the property for sale
All viable property must be listed for sale on MLS.	Viable land will be either listed for sale on MLS or offered for sale by City Real Estate Staff as per Council direction. Viable land with a market value of less than \$25,000 will be offered for sale by City Real Estate staff.
For all property with an estimated value of \$50,000 or more at least one appraisal and for properties with an estimated value of \$500,000 or more at least two appraisals	For all property with an estimated value of \$50,000 or more at least one appraisal
If Council has a special project Administration would need to seek an exemption from following the current policy.	Includes a classification titled Special Project, which is not applicable to the policy. It allows for land to be used for development or other opportunity as determined by Council

Certain of the proposed changes to By-Law 247-2007 will be discussed in more detail below.

- **Acquisitions:** There are no requirements in the *Municipal Act, 2001* (Act) governing the acquisition of a property by a municipality. Regardless of value, typically appraisals are obtained by Real Estate staff for presentation to the third party land owner. Permission to permit the acquisition is then obtained by Council or CAO approval.
- **Surplus Declaration/Civic Corner Notification:** The most recent amendments to the Act did not require an express declaration that a property be declared surplus to the needs of the municipality. As such there was no requirement in By-Law 247-2007 to declare a property surplus prior to its disposal. Administration was required to present Council

with a communication report that a property was to be offered for sale. Upon receipt of an acceptable offer to purchase Administration would prepare a report for Council's consideration or a CAO report under delegated authority. The notification of the sale was included in the Civic Corner. The notification process became more onerous if the report was prepared in-camera or under delegated authority. Administration is proposing that the property be declared surplus and also seek permission to offer the property for sale. Notification on the Civic Corner would be for both the surplus declaration and offering the property for sale. This will allow for a more open, transparent and equitable real estate disposal process.

- By-Law 247-2007 included a provision that all parcels of land eligible for a building permit would be listed for sale on MLS. The new policy allows for properties with a value of \$25,000 or less to be offered for sale by Administration. It also allows Council to provide direction upfront on how it wishes the property to be marketed-either by MLS or by municipal real estate staff.
- Appraisal requirements: The requirement for two independent property appraisals for properties with an estimated value of \$500,000 or more was removed because it was felt that one properly prepared independent appraisal, combined with the external knowledge of municipal real estate staff should be sufficient to establish an appropriate appraised market value. In the case of properties to be listed for sale on MLS, Administration also meets with the listing agents to get their sense of the market value of the land in light of the current market conditions.
- The new policy includes a classification called "Special Project". If a parcel of land is deemed a special project by Council the sale of the land would be excluded from following the requirements in the proposed policy. Administration would follow the direction of Council.

Changes to Schedule A of By-Law 208-2008 were for the most part a consolidation of requirements in the previous By-Law done to make the Schedule easier to read and understand. The changes to Section 1.30 of By-Law 208-2008 were done to make it easier to ascertain which interests in property the CAO could make decisions on. The new 1.30 covers off the City as both "Grantee" and "Grantor" of interests in property.

4. RISK ANALYSIS:

Failure to periodically update the Disposal of Land Policy could expose the Corporation to criticism from the rate payers in the event that they do not feel the disposal process is fair, equitable and transparent.

5. FINANCIAL MATTERS:


N/A

6. CONSULTATIONS:

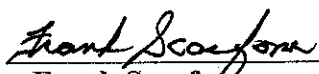
Cheryl Glassford, Legal Counsel

7. CONCLUSION:


The current policy for the sale of land was approved in December 2007. Administration has reviewed the current policy and made improvements to various parts of the policy to more accurately reflect the realities of the current business climate and the desire of Council. Approval of the recommendations above will also streamline the process.



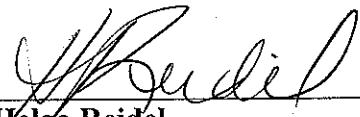
Mike Stamp
Manager of Real Estate Services



Frank Scarfone
Coordinator of Real Estate Services



Shelby Askin Hager
City Solicitor



Helga Reidel
Chief Administrative Officer

FS

APPENDICES:
A and B

DEPARTMENTS/OTHERS CONSULTED:

Name:
Phone #: 519 ext.

NOTIFICATION :

Name	Address	Email Address	Telephone	FAX

APPENDIX A

THE CORPORATION OF THE CITY OF WINDSOR POLICY

Service Area:	Office of the City Solicitor	Policy No.:	
Department:	Legal	Approval Date:	
Division:	Real Estate	Approved By:	City Council
		Effective Date:	
Subject:	DISPOSAL OF LAND	Procedure Ref.:	Municipal Act 2001, c. M. 25, s. 270. (1)
		Pages:	Replaces: Dealings With Real Property Policy
Prepared by	Mike Stamp		Date: December 17, 2007

DEFINITIONS

Appraisal: a valuation of the Market Value of Land that is satisfactory to the Manager of Real Estate Services.

CAO is the City's Chief Administrative Officer

CITY: The Corporation Of The City Of Windsor

Disposal: the sale, transfer, conveyance or exchange of the fee simple interest in Land.

Land: includes buildings and other improvements thereon.

Market Value: the most probable price which Land 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.

Other Land Interests: a granting of an interest in Land that is not a Disposal, such as easement, leases, encroachments etc.

Special Project: Land to be used for development or other opportunity, as determined by Council.

Surplus: Land which is not required for municipal purposes, as determined by Council.

Viable Land: a parcel of Land, which, on its own, would be eligible for a building permit.

1. POLICY

1.1 Surplus Land will be considered for Disposal so as to achieve the best interest of the City.

2. PURPOSE

2.1 To abide by section 270. (1) of the *Municipal Act, 2001* requiring municipalities to "adopt and maintain policies with respect to... sale and other disposition of land."

2.2 To promote consistent, transparent and equitable processes in Disposals in a manner consistent with the best interest of the City.

3. **SCOPE**

3.1 Subject to section 3.2, this Policy is applicable to all City operations involving Disposals, including any agencies, boards or commissions whose financial operations are accounted for within the City's financial statements.

3.2 This Policy is not applicable to any Disposals where:

- 3.2.1 The transaction is governed by any federal legislation or legislation of the Province of Ontario (examples include tax sales and expropriation by the province);
- 3.2.2 The transaction is completed in accordance with Council direction, or the approval of the CAO as authorized through delegation 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 the City limits and the Essex Region Conservation Authority;
- 3.2.3 The Disposal is being done by a corporation AND the City is the sole shareholder of that corporation;
- 3.2.4 The City is transferring Land to a corporation, in which the City is the sole shareholder AND the transaction is completed in accordance with Council direction or CAO approval as authorized through delegation;
- 3.2.5 The property is deemed to be a Special Project AND the transaction is completed in accordance with Council direction or CAO approval as authorized through delegation as applicable;
- 3.2.6 Any other City policy that may supersede this policy;
- 3.2.7 A closed street or alley is conveyed to an abutting property owner AND the transaction is completed in accordance with Council direction or CAO approval as authorized through delegation, as applicable, or the Street and Alley Closing policy; or,
- 3.2.8 The transaction involves Other Land Interests AND it is completed in accordance with Council direction or CAO approval as authorized through delegation, as applicable, or other approved by-laws or policies.
- 3.2.9 Other agreements authorized by Council such as a development agreement.

4. RESPONSIBILITY

4.1 City Real Estate Staff will:

- 4.1.1 periodically review listings of all City-owned Land to determine which Land may be considered Surplus;
- 4.1.2 circulate potentially Surplus Land to City staff for comment and input;
- 4.1.3 make recommendations to Council about declaring Lands surplus and seek Council's authority to offer the Land for sale;
- 4.1.4 pursue Disposals per this policy and make recommendations to Council, or the CAO as authorized through delegation;
- 4.1.5 retain qualified Multiple Listing Services ("MLS") brokers or agents to assist, as appropriate, with the Disposal;
- 4.1.6 obtain independent property Appraisals for Land in keeping with any requirements imposed by any applicable legislation, by-law, or this policy;
- 4.1.7 report the details of any Disposal to the appropriate departments and to the Chief Financial Officer and City Treasurer or as he or she may further delegate for the purposes of maintaining accurate corporate records; and
- 4.1.8 in consultation with other City staff and departments, initiate any changes to existing policies, procedures or recommendations addressing Disposals.

4.2 City Finance Division staff, under the direction of the Chief Financial Officer and City Treasurer or as he or she may further direct, will prepare and maintain all data bases and records with respect to City Land.

4.3 Other City staff will receive and review proposed Disposals of City Land circulated by City Real Estate Staff, and within twenty (20) business days of such circulation will provide comment, information and input as to whether the Land being proposed for Disposal may be considered Surplus.

5. DISPOSAL RULES

5.1 Notifications and Authority

- 5.1.1 Disposals require Council approval unless the transaction meets the criteria of delegated authority under Schedule "A", Property Transactions in By-Law 2008-2008, in which case the transaction must comply with such criteria.
- 5.1.2 Notification of the intention to declare Land surplus and the authority to offer the Surplus Land for sale will be printed in the "Civic Corner" of the Windsor Star;

5.2 Property Values

- 5.2.1 For Land with an estimated Market Value of fifty thousand dollars (\$50,000) or more, at least one independent Appraisal will be obtained.
- 5.2.2 Disposal will be at Market Value, or equivalent consideration, unless Council or the CAO as authorized through delegation, directs otherwise.

5.3 Method of Disposal

- 5.3.1 Subject to direction from City Council all Surplus Land will either be listed on the MLS of the local Real Estate Board or offered for sale by City Real Estate staff, save and except:
 - 5.3.1.1 Land, which has a Market Value as determined by the Manager of Real Estate Services of less than \$25,000 in which case City Real Estate Staff will offer the Land for Disposal on the City web site and place a "for sale sign" on the Land if feasible and advertise in the Windsor Star as deemed appropriate by the Manager of Real Estate Services;
 - 5.3.1.2 Landlocked Land of any size, which may be sold directly to the abutting property owner(s), provided the Land is sold at no less than the Market Value established by either City Real Estate Staff or by an independent Appraisal. If more than one abutting property owner wishes to acquire the landlocked Land, City Real Estate Staff will contact the abutting owners to determine whether a consensus can be arrived at in splitting the Land amongst interested abutting owners. In the event that a consensus cannot be arrived at, all interested abutting property owners will be requested to provide Administration with an offer for the whole landlocked parcel or
 - 5.3.1.3 Land, which is not Viable Land and which cannot be rendered Viable Land 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 City Real Estate Staff 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 Land City Real Estate Staff will contact the abutting owners to determine whether a consensus can be arrived at in splitting the Land amongst interested abutting owners. In the event that a consensus cannot be arrived at, all interested abutting property owners will be requested to provide Administration with an offer for the whole parcel.
- 5.3.2 All Viable Land will be marketed for a period of at least ten (10) business days prior to the review and consideration of any offer to purchase except as otherwise provided in this policy.

- 5.3.3 City Real Estate Staff will confirm whether there is any right for a former owner to repurchase the Land under the *Expropriations Act* and advise Council of same in the report required under 5.1.1.
- 5.3.4 All offers to purchase Land from the City by means of an Agreement of Purchase and Sale must be accompanied by a deposit in an amount determined by the Manager of Real Estate Services but in any case not less than one thousand dollars (\$1,000).
- 5.3.5 Unless otherwise directed by Council, all Disposals will be on a cash basis. If the City Solicitor determines that exceptional and specific circumstances exist that would warrant consideration of a Disposal on something other than a cash basis, the City Solicitor will present the exceptional and specific situation to Council for determination.

5.4 Land Transactions

- 5.4.1 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.
- 5.4.2 The City 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, or CAO as authorized through delegation, on any Disposal provided such extension or abridgement does not change the original intent of the approved Disposal.

5.5 Unserviced Land

- 5.5.1 Land located in areas lacking municipal services will be retained by the City until such time as services are available except as provided in 5.5.2.
- 5.5.2 In the event of a special circumstance involving the potential Disposal of unserviced Land, City Real Estate Staff will bring the issue to Council for consideration.

5.6 Parkland and Natural Environmental Areas

- 5.6.1 There will be no Disposal of Parkland without Council approval.
- 5.6.2 Subject to section 5.6.1, Disposal of Parkland and other Land having significant natural features requires satisfaction of Official Plan requirements and, if applicable, the implementation of appropriate measures to protect the significant natural features.

5.7 Heritage Properties

- 5.7.1 There will be no Disposal of Land designated 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 Disposal.

6. RECORDS, FORMS AND ATTACHMENTS

6.1 Filing and retention of records related to Disposals will be in accordance with legislative requirements, guidelines of governing and professional bodies and City policy.

APPENDIX B

SCHEDULE "A" TO BY-LAW 208-2008 - PROPERTY TRANSACTIONS

I. Property Acquisition and Interest:

1. The Chief Administrative Officer is authorized to approve fee simple land acquisitions, acquisition of easements and consent to enter/temporary working easements up to and including a limit of \$100,000 (exclusive of any taxes, registration and legal fees, real estate commissions and survey costs), subject to the following:
 - a. Transactions over \$50,000 must be supported by an independent appraisal;
 - b. The transaction must be in accordance with either a council resolution or a council approved budget; or in the case of a donation, the acquisition must be in the best interests of the City and must be in compliance with the Donations Policy;
 - c. The land is not being acquired by means of expropriation;
 - d. The owner has acknowledged in writing that he/she/it is NOT:
 - i. A City employee, the Mayor or a Member of Council;
 - ii. A family member of a City employee, the Mayor or a Member of Council where family member includes a parent, spouse, child, sibling, grandparent, grandchild, step and common-law relationships and in-law relationships; or,
 - iii. A corporation or partnership of which an employee is a shareholder or partner.

II. Property Sale and Property Interest:

2. The Chief Administrative Officer may approve fee simple land sales (including vacant or improved properties and closed rights-of-way if not sold to an abutting property owner and is permitted under the applicable closing or conveying bylaw) or other conveyances of an interest in land up to and including \$100,000 (exclusive of any taxes, registration and legal fees, rehabilitation costs, real estate commission and survey costs), subject to the following conditions:
 - a. For a fee simple sale, the land has been declared surplus by council resolution and Council has granted the authority to offer the land for sale;
 - b. The land was not acquired by the municipality by means of expropriation.
 - c. Transactions over \$50,000 must be supported by an independent appraisal;
 - d. In the opinion of the City Solicitor, the fee simple sale of land is not contrary to Bylaw XX-2014 (Disposal of Land policy) as amended from time to time. Other conveyances of an interest in land up to and including \$100,000 (exclusive of any taxes, registration and legal fees, rehabilitation costs, real estate commission and survey costs) are not subject to By-Law XX-2014 (Disposal of Land policy).
 - e. The Purchaser has acknowledged in writing that he/she/it is NOT:
 - i. A City employee, the Mayor or a Member of Council;
 - ii. A family member of a City employee, the Mayor or a Member of Council where family member includes a parent, spouse, child, sibling, grandparent, grandchild, step and common-law relationships and in-law relationships; or,
 - iii. A corporation or partnership of which an employee is a shareholder or partner.

III. General:

3. The Chief Administrative Officer may refer any matter arising under this Schedule "A" to Council for its consideration.
4. Notwithstanding any delegated authority contained in this Schedule "A", Council must approve any sale or acquisition where, in the opinion of the Chief Administrative Officer, there is a perceived or apparent conflict of interest.