

BY-LAW 2021/18

BEING A BY-LAW TO REPEAL BY-LAW NO. 2015/57 TO ESTABLISH A PROCEDURE FOR THE SALE AND DISPOSITION OF LAND OWNED BY THE MUNICIPALITY OF WEST NIPISSING

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 Municipality of West Nipissing deems it expedient to enact a policy for the sale and disposition of land by the corporation;

NOW THEREFORE BE IT RESOLVED THAT Council of the Corporation of Municipality of West Nipissing enacts as follows:

1. **THAT** Schedule "A - Policy Governing the Sale and other Disposition of Land" annexed hereto shall form part of this by-law.
2. **THAT** this by-law shall repeal By-Law **2015/57**, as amended.
3. **THAT** this by-law and attached policy shall take effect on the date it is passed.

ENACTED AND PASSED THIS 16th DAY OF MARCH 2021 AS WITNESSED BY THE SEAL OF THE CORPORATION AND THE HANDS OF ITS PROPER OFFICERS.

« Mayor Joanne Savage »

JOANNE SAVAGE
MAYOR

« Melanie Ducharme »

MELANIE DUCHARME
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 Municipality of West Nipissing. 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 Municipality.

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" or "CAO" means the Chief Administrative Officer of the Corporation of the Municipality of West Nipissing;
- 2.4. "Clerk" means the Clerk of the Corporation of the Municipality of West Nipissing;
- 2.5. "Council" means the Council of the Corporation of the Municipality of West Nipissing;
- 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 municipality'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 Municipality for the purpose of correcting or clarifying titles or boundaries of its land or of land not owned by the ;
- 2.7. "Local board" means a local board defined in the *Municipal Act, 2001*, as amended;
- 2.8. "Land" or "Property" means lands and premises or any proprietary interest in land which is owned or held by the Municipality in fee simple or otherwise, including, without limiting the generality of the foregoing, all easements, rights-of-way and leasehold interests of the Municipality, 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 Municipality which are parks, parking lots, open space, buildings and lands laid out or intended to be laid out as highways, (including forced roads to which the municipality may or may not have title), streets, laneways and any thoroughfare over which the public has now or has in the past, had right of passage;
- 2.9. "Municipality" means the Corporation of the Municipality of West Nipissing;

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 road access or the size of said land does not allow for the construction of a building respecting the Zoning By-law or the Building Code, if sold to the owner abutting said land.

4. SALE OF LAND PROCEDURES

- 4.1.** The Municipality 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 Clerk.
- 4.3.** Upon receipt of a written request, the Clerk will circulate the land disposal direction or request to:
 - a)** the CAO,
 - b)** the Director of Community Services,
 - c)** the Manager of Public Works,
 - d)** the Manager of Water & Waste Water, and
 - e)** such further municipal staff or department, as may be deemed appropriate

to obtain their comments on whether the property may be considered surplus to the Municipality's need and/or any other issues which would need to be addressed prior to or in conjunction with the potential land disposal.

- 4.4.** Following a circulation, the Clerk 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 Municipality 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 Municipality 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 Clerk shall obtain at least one appraisal or opinion of value, as the Clerk Deems appropriate, 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 Section 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 Municipality'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 Municipality 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 Municipality will require the purchaser to be solely responsible for all costs incurred by the Municipality to dispose of any property, which costs may include the following:

- a) legal survey, if required;
- b) appraisal or opinion of value, as the case may be;
- c) removal/discharge of encumbrances,
- d) advertising,
- e) improvements; and
- f) administration fees if applicable.

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 Clerk'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 or bank draft;
- 9.1.4. Tenders shall be submitted on the prescribed form;
- 9.1.5. Tenders 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, in the opinion of Council, suitable for development, 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 Clerk's opinion, the development potential is important;
- 9.2.2. An RFP document enumerating the conditions and minimum criteria shall be drafted. The Clerk may be authorized by Council to seek the assistance of any professionals to draft the RFP document. Because proposals 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. Proposals shall be accompanied by a bid bond issued by a Canadian Surety Company of 10% of the proposed bid or a certified cheque or bank draft;
- 9.2.5. Proposals shall be submitted on the prescribed form;
- 9.2.6. Proposals shall be delivered in a sealed envelope to the Clerk's office by the date and time specified on the notice. Proposals may, in the discretion of the Clerk, be opened in public at the time prescribed on the notice, however, only the name of proponent will be given publicly, the content of the proposals shall remain confidential until the proposal has been reviewed and a formal agreement is concluded.
- 9.2.7. Proposals shall be assessed in accordance with the criteria set out in the RFP by the Clerk, together with such other member(s) of staff as may be deemed appropriate, including, but not limited to, the CAO, Director of Corporate Services or the Director of Community Services.

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 Clerk shall be authorized to sign the listing agreement;

- 9.3.4. The offers shall be submitted to the Clerk on a standard offer to purchase form or document drafted by a lawyer;
- 9.3.5. All offers shall be submitted by the Clerk to Council for approval of the sale price.

10. DISPOSAL OF INDUSTRIAL LAND

- 10.1. Industrial land owned by the Municipality may be disposed of by direct negotiation in the following situations only:
 - 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 Municipality 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 Municipality. The Municipality 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 Municipality'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. DISPOSAL OF STREETS, LANEWAYS OR PUBLIC THOROUGHFARES

- 12.1. The following outlines the closing and subsequent sale of streets, laneways or public thoroughfares, regardless of whether such street, laneway or public thoroughfare is open to the public, in the Municipality:
 - 12.1.1. A property owner who wishes to have the Municipality close a street, laneway, public thoroughfare or any portion thereof must make a request to the Clerk's office;
 - 12.1.2. The applicant must obtain the signatures of all property owners whose lands abut the

portion of the street, laneway or public thoroughfare to be closed. These owners also must indicate whether they wish to have a portion of the street, lane or public thoroughfare conveyed to them;

- 12.1.3.** The applicant or any person to whom the street, laneway or public thoroughfare will be conveyed, will provide written agreement to be responsible for the costs or such pro-rata share thereof set out in paragraph 8;
- 12.1.4.** Once the Clerk has received the signatures of the applicant and abutting landowners, the Clerk's office will circulate the information to those departments set out in 4.3, above, and any outside agencies that, in the discretion of the Clerk, may have an interest in the matter for their comments
- 12.1.5.** The Clerk shall prepare a report with a recommendation to be provided to Council for its consideration;
- 12.1.6.** If Council approves the proposed closing, the Clerk's office then posts a notice in the local newspaper stating the Municipality's intention to close the lane or street or any portion thereof;
- 12.1.7.** If no objections to the street or lane closing are received, the municipality shall obtain a reference plan of survey of the land prepared by an Ontario Land Surveyor.
- 12.1.8.** Once the plan has been prepared and deposited in the Land Registry Office a by-law will be placed on Council's agenda for enactment. The By-Law shall be registered in the Land Registry Office as is required by the Act;
- 12.1.9.** The Clerk's office will prepare the appropriate deeds and will carry out the exchange of such documentation and may be required with the solicitors of the benefitting owners;
- 12.1.10.** The Municipality may retain or grant easements for present or future use by utility companies. This may restrict the improvements undertaken by property owners on the easement portion of the property;
- 12.1.11.** Notwithstanding the provisions of this Section 12, if a commercial use proposes to expand its operation and to do so it requires the entire portion of an abutting street, lane or public thoroughfare, Council may agree to convey the entire street, lane or public thoroughfare to the commercial establishment, without offering any portion of the property to an abutting property owner or property owners.

13. ERRORS OR OMISSIONS

- 13.1.** 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 Municipality will not render such disposal invalid or void.