

**THE CORPORATION OF THE
TOWN OF WASAGA BEACH**

BY-LAW NO. 2014-21

**A BY-LAW TO ESTABLISH A POLICY AND PROCEDURES GOVERNING
THE SALE AND OTHER DISPOSITION OF LAND**

WHEREAS the *Municipal Act, 2001* states that the municipality shall adopt and maintain policies with respect to the sale and other disposition of land owned by the municipality;

AND WHEREAS it is deemed expedient to pass a by-law to establish procedures governing the sale and other disposition of land owned by the Municipality;

WHEREAS it is deemed expedient to repeal the original By-Law, and to replace it with a new updated By-Law;

NOW THEREFORE, the Council of the Corporation of the Town of Wasaga Beach HEREBY ENACTS as follows:

1. SHORT TITLE

This by-law may be referred to as the "Sale of Land Policy".

2. DEFINITIONS

In this by-law:

"Act" means the *Municipal Act, 2001, as amended*.

"Appraisal" means an opinion of the fair market value of the surplus land provided by a land appraiser or such other qualified person as Council may provide in this policy.

"Certificate" means the Clerk's Certificate verifying that, to the best of his/her knowledge, the requirements of the *Municipal Act, 2001* and a policy which applies to the sale of surplus land have been complied with.

"Clerk" means the Town Clerk of The Corporation of the Town of Wasaga Beach or a person designated by Council.

"Council" means the Council of The Corporation of the Town of Wasaga Beach.

“Highway” means a common and public highway and includes any bridge, trestle, viaduct or other structure forming part of the highway and, except as otherwise provided, includes a portion of a highway.

“Land” means lands owned by the Town of Wasaga Beach, whether vacant or not, or any other proprietary interest in lands owned by the Town, and, without limited the generality of the foregoing, includes easement, rights-of-way, leaseholds exceeding twenty-one (21) years, and an interest in lands under an agreement of purchase and sale.

“Local Board” means a municipal service board, transportation commission, public library board, board of health, police services board, planning board or any other board, commission, committee, body or local authority established or exercising any power under any Act with respect to the affairs or purposes of one or more municipalities.

“Newspaper” means a printed publication in sheet form, intended for general circulation in the Town of Wasaga Beach, published regularly at intervals of no longer than one week, consisting in great part of news of current events of general interest that may or not be sold to the public and to regular subscribers.

“Notice” means a written, printed, published, or posted notification or announcement, and in accordance with the Town’s provision of Notice Policy;

“Public Register” means a listing and description of real property owned or leased by the Town or Board to be maintained in the Clerk’s Office and to be made available to the public, but shall not include those classes of lands deemed to be exempt.

“Published” means published in a daily or weekly newspaper that, in the opinion of the Clerk, has such circulation within the municipality as to provide reasonable notice to those affected thereby, and “publication” has a corresponding meaning.

“Sale” means an agreement of purchase of municipal surplus property has been accepted by the Town of Wasaga Beach, and without limiting the generality of the foregoing, excluding lands temporarily conveyed to the Town of Wasaga Beach for municipal purposes intended to be reconveyed to the grantor, and any land or interest in land Quit Claimed or released by the Town of Wasaga Beach.

“Surplus Land” means any land declared surplus by the Council of the Town of Wasaga Beach.

“Town” means the Corporation of the Town of Wasaga Beach.

3. DECLARATION OF SURPLUS LAND

- a) Prior to selling any land, Council shall, by a resolution or by-law, at a meeting open to the public, declare the land to be surplus to the needs of the Town.

4. PROCEDURE FOR SALE OF SURPLUS LAND

4.1 Appraisal

- a) Before selling any surplus land, the Town shall obtain an appraisal or Letter of Opinion of the fair market value of the land from:
 - i. An independent qualified appraiser who shall be registered member in good standing of the Appraisal Institute of Canada, or
 - ii. A real estate brokerage firm or an independent real estate agent, or
 - iii. Any other person deemed by the Town to be qualified for this purpose, including a qualified land assessor in the Province of Ontario.
- b) Notwithstanding the above requirement, the Town shall not be required to obtain an appraisal for any class of land or sale of land to any public body as follows:
 - a. Land 0.3 metres or less in width acquired in connection with an approval or decision under the *Planning Act*.
 - b. Closed highways if sold to an owner of land abutting the closed highways.
 - c. Highways, including road allowances.
 - d. Land formerly used for railways lines if sold to an owner of land abutting the former railway land.
 - e. Land that does not have direct access to a highway if sold to the owner of land abutting that land.
 - f. Land repurchased by an owner in accordance with the *Expropriations Act*.
 - g. Land sold under the *Municipal Act* relating to Grants in Aid, Service to Small Business or Community Development Corporations.

- h. Land to be used for sites for the establishment and carrying on of industries and of industrial operations and incidental uses.
- i. Easements granted to public utilities, cable or to telephone companies.
- j. Land sold under the *Municipal Act* for Tax Arrears.
- k. The entering into an Agreement to provide for a long standing encroachment.
- l. The granting of a license to use property which is less than a lease.
- m. The granting of Municipal consents to utilities companies for the placement of physical property on municipal right-of-way.
- n. The granting of franchises relative to the occupation of municipal rights-of-way.
- o. A municipality.
- p. A local board, including a school board and a conservation authority.
- q. The Crown in Right of Ontario or Canada and their agencies.

4.2 Notice

- a) Before selling any surplus land, the Town shall publish a Notice in at least one (1) newspaper and on the Town's website. Additional Notice, including publication in newspapers which provide general distribution within or beyond the geographic area of the Town of Wasaga Beach shall be at the discretion of the Town Clerk.
- b) The Town shall give Notice no later than 14 days prior to the selling of the land and shall include the following:
 - i) A brief description of the reason for the land sale;
 - ii) The proposed date of the land sale and/or the date, time and location of the meeting where Council will consider the land sale;
 - iii) A legal description, municipal address and/or key map which in the opinion of the Clerk is sufficient to identify the lands to be sold;

- iv) When and where information pertaining to the land sale will be available for public viewing; and
- v) Name and contact information of the person handling the surplus land sale and/or the deadline for any written submissions to the Town.

4.3 Survey

- a) Before selling any surplus land, the Town shall obtain a survey of the land from an independent surveyor in accordance with the laws of the Province of Ontario. This requirement is deemed to be waived if, in the opinion of the Clerk, a current survey exists. A survey may not be required if an alternate legal description for the property exists.

4.4 Other Actions

- a) Before selling any surplus land, the Town shall be satisfied that it is legally able to sell the property and shall obtain approval from any other agencies, as may be required by law.

4.5 Due Diligence

- a) The purchaser is responsible to complete due diligence to ensure the property is useable for the intended purposes.

5. METHOD OF SALE

Council shall determine the appropriate method of sale for each parcel of land declared surplus. Based on such method chosen, the following procedures shall be followed:

5.1 Tender or Quotation

- a) Where the method of sale is by Tender or Quotations the Town shall:
 - i) estimate the costs incurred or required to dispose of the surplus land including appraisal, public notice, survey, legal fees, encumbrances, improvements or such other costs associated with the land sale;
 - ii) determine a reserve bid amount based on the appraised value plus estimated costs above;
 - iii) prepare an Invitation to Tender or Request for Quotations which shall be reviewed by the Treasurer before publication;

- iv) include in all Invitations to Tender or Request for Quotations the statement that “the highest or any offer may not necessarily be accepted”; and
 - v) give notice by way of posting on the Town website and publishing in at least one (1) newspaper of general circulation at least 14 days prior to the date when the Tenders or Quotations will be considered by Council.
- b) Council reserves the right to accept a tender or Quotation less than the reserve bid amount where, in the opinion of Council, it is in the best interests of the Town to do so.

5.2 Real Estate Broker

- a) Where the method of sale is by way of a Real Estate Firm or Broker, the Town shall:
 - i) Invite proposals from not less than three (3) Real Estate Firms or Brokers operating in the Town or part of the Town. Said proposals are to include a recommendation to Council on the listing price based on an evaluation of the fair market value of the surplus land, the proposed term of the listing agreement, services to be provided, and the real estate commission payable by the Town.
 - ii) Ensure that the real estate agent posts at least one “For Sale” sign at the subject property including the name of the broker and telephone number;
 - iii) Ensure that the real estate agent lists the land for sale on the Multiple Listing Service and actively and aggressively market the lands;
 - iv) Ensure that all prospective purchasers are made aware that “the highest or any offer may not necessarily be accepted”; and
 - v) Have all Offers to Purchase submitted to the Clerk for presentation to Council, prior to the sale being completed;
- b) Council reserves the right to adjust the listing price in consultation with the listing agent and/or accept an offer to purchase less than the listing price where, in the opinion of Council, it is in the best interests of the Town to do so.

5.3 Sale of Closed Highway

- a) Where the surplus land is a closed highway or is being closed under the provisions of the *Municipal Act*, the Town shall:
 - i) Estimate the costs incurred or required to close and/or sell the highway including public notice, survey, legal fees, realty fees, encumbrances, improvements or such other costs associated with the land sale;
 - ii) All costs incurred are the responsibility of the applicants for the purchase;
 - iii) Determine a sale price based on the value of the land plus estimated costs above;
 - iv) Where the purpose of the proposed road closure and sale is to permit development of the lands either as part of an application under the *Planning Act* or the *Building Code Act*, the Town shall determine the value of the lands in a manner consistent with this By-Law;
 - v) The Town may, at its sole discretion, place a nominal value on land where the purpose of the road closure and sale is to resolve a long standing encroachment on the highway or to bring a pre-existing building into compliance with the Town zoning by-law;
 - vi) Give notice in the same time, form and manner as set out in the Notice By-Law, or such other By-law as Council may pass from time to time, for the purpose of giving notice of the permanent closure of a road under the *Municipal Act*.
 - vii) Where the sale of the road is being carried out in conjunction with the road closure, the Notice of Intent may be issued for both purposes provided that the form of the notice references both the closure and sale of the highway; and
 - viii) Establish any special terms or conditions of the sale;
 - ix) Follow the policy outlined in Schedule "A" to this by-law when presented with an application to stop up, close and sell a road allowance.
- b) Council may reserve the right to adjust the sale price where, in the opinion of Council, it is in the best interests of the Town to do so.

5.4 Alternate Method

- a) Where an alternate method of sale is used, Council shall provide for:
 - i) a determination of the sale price based on the appraisal of the land value and any costs associated with the proposed method of sale;
 - ii) the method of public notice
 - iii) where, when and who will receive the offers or bids; and
 - iv) any terms and conditions of the sale.
- b) Council may reserve the right to adjust the sale price where, in the opinion of Council, it is in the best interests of the Town to do so.

6. CLOSED SESSION

- a) All tenders, quotations or offers shall be presented to Council in Closed Session for deliberation unless Council direction has been given to staff to negotiate the sale within certain terms or an alternate method of sale approved by Council determines otherwise.

7. NOTICE TO OTHER MUNICIPALITIES AND AGENCIES

- a) Once Council has declared a property to be surplus and the property is located in another municipality, Council shall provide the municipality in which the property is located the first right of refusal and then other governments or public agencies.

8. NO FURTHER NOTICE REQUIRED

- a) If a final decision is not made at the Council meeting specified in a notice given under this policy and Council refers consideration of the matter to a future Council or Committee meeting for discussion, no further notice is required provided that a resolution is passed indicating Council's decision.
- b) The provisions of this section shall also apply to any further referrals of the matter, including a Committee recommendation to pass the by-law.
- c) Notwithstanding the above, a land sale may not be invalidated on the basis that Council or Committee failed to pass a resolution or that a resolution failed to specify to which meeting the matter was referred provided that a public statement was made of the Town's intent to continue its deliberations on the matter.

8. CLASSES OF PROPERTY EXEMPT FROM PROCEDURES

- a) That the provisions of this by-law shall apply to all classes of land owned by the Town, save and except:
 - i) the sale of lands for the arrears of taxes which shall be subject to the procedures set out in Part XI of the *Municipal Act*.
 - ii) The sale of lands under the *Expropriations Act*; and
 - iii) The sale of the classes of land exempted under the *Municipal Act*, as follows:
 - a) land sold under Municipal Capital Facilities
 - b) land to be used for the establishment and carrying on of industries and industrial operations and incidental uses subject to the Act.

9. OFFER OF SALE

- a) Any offers received for real property to be disposed of by the Council must be made in writing and must include the following:
 - a. a proper legal description of the land;
 - b. the full name of the person making the offer;
 - c. the purchase price;
 - d. a deposit by cash or certified cheque to the Municipality in the amount of not less than ten percent (10%) of the entire purchase price;
 - e. a date set for closing of the transaction
- b) Notwithstanding the public notice of the proposed sale is given and that one or more interested parties may present to Council an offer to purchase or an offer or lease the real property, nothing shall fetter the absolute discretion of Council to retain the real property or to dispose of the real property on such terms and conditions as may be fixed by Council, which shall include:
 - i) the power to list the property with a real estate broker;
 - ii) the power to sell or lease the property for nominal consideration and to whomever it wishes, regardless of whether the disposition is to the party which presented the best offer.
- c) Upon acceptance of an offer to purchase, the Council shall pass any and all by-laws necessary to complete the disposal of the real property, including any by-law necessary to authorize the Mayor and Clerk to execute any documentation necessary to complete the transaction.

9. AUTHORIZING BY-LAW

- a) That any sale of land by the Town shall be ratified by a by-law authorizing the sale.

10. CERTIFICATE OF COMPLIANCE

- a) That the Clerk may issue a certificate with respect to a sale of land by the municipality verifying that to the best of his or her knowledge the requirements of the *Municipal Act* and this By-Law which apply to the sale of land have been complied with.
- b) That the Clerk's Certificate shall, when issued, be included in the deed or transfer of land and, unless a person to whom the land is sold has notice to the contrary, shall be deemed to be sufficient proof that this section has been complied with.

11. CONFLICT WITH ACTS & REGULATIONS

- a) That in the event the provisions of this By-law are inconsistent with the provisions of the *Municipal Act*, its Regulations or any other *Act*, the provisions of the *Municipal Act* or Regulation shall prevail.

12. SCHEDULES

- a) That the Schedules attached hereto form a part of this By-Law. Schedules may be amended from time to time without an amendment to this by-law.

13. PUBLIC REGISTRY

- a) That a public registry be established and maintained listing and describing the land owned and leased by the municipality or local board.
- b) The register shall be maintained at the Office of the Clerk and shall be available to the public during regular office hours.
- c) Notwithstanding the above, the following classes of real property are not required to be kept in the public register:
 - i) land 0.3 meters or less in width acquired in connection with an approval or decision under *The Planning Act*.
 - ii) All highways, road and road allowances, whether or not opened, unopened, closed or stopped up, as well as land acquired for road widening.
 - iii) land formerly used for railway branch lines.

14. ADMINISTRATION AND REVIEW PERIOD

- a) This by-law and the sale and disposition of Town land shall be administered by the Clerk's Office.
- b) This By-Law shall be reviewed every five years by the Clerk or as required under the *Municipal Act*, and will be revised in light of any changes in legislation.

15. REPEAL PREVIOUS BY-LAWS

By-Law No. 2004-51 and all previous by-laws, resolutions and policies and parts of by-laws, resolutions and policies inconsistent with the provisions of this by-law regarding procedures for the sale and other disposition of land are hereby repealed.

16. EFFECTIVE DATE

This By-Law shall come into force and take effect on the date of its final passing.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 11TH DAY OF MARCH, 2014.

Original Signed by Mayor

Cal Patterson, Mayor

Original Signed by Clerk

Twyla Nicholson, Clerk

Disclaimer:

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SCHEDULE "A" to BY-LAW NO. 2014-21

POLICY FOR ROAD ALLOWANCE CLOSURE AND SALES

Preamble

Road allowances are one of a variety of roads that are defined as highways in the *Municipal Act*. Within a municipality, common and public highways are vested in the Council of the municipality having jurisdiction over them, in accordance with Section 28 the *Municipal Act*, except to the extent that they have been stopped up according to law (and sold).

There are a variety of road allowances located within the municipal boundaries.

Consideration of the sale of a road allowance or a portion of a road allowance will be given if it is not used for public access, emergency access, or public waterfront activities. Adjoining landowners in the neighbourhood or the community must not be deprived of access to water in the case of a shoreline road allowance. The Town must also look to the future to ensure that the subject road allowance will not be required for Municipal purposes at some later date.

Shoreline Road Allowances:

Many waterfront properties are fronted by road allowances.

In some cases owners of land adjacent to waterways have, over the years, constructed valuable cottages, residences and other structures on the road allowance (or made improvements) in front of their properties or partly on land that they do not own.

In recognition of this situation and the fact that this area is primarily utilized by the abutting landowner, Council will generally entertain requests to purchase shoreline road allowances within the Municipality.

Shoreline Road Allowances will only be sold to owners of abutting land.

Road Allowances Leading to Water:

In general, Council encourages the preservation of road allowances leading to water.

Council will consider very carefully applications for the disposition of road allowances leading to water. The focus of debate shall be based on the merits of the applicant's proposed use and need for the lands versus the preservation of the road allowance leading to water while considering any effects or outcomes that may result from the proposed disposition. The applicant must show compelling reasons why the Town should sell the road allowance.

Careful consideration shall be given to the sale of road allowances leading to the water to ensure that the sale will not have any negative effect on the neighbourhood emergency access, present or potential public access and public waterfront activities. Area land owners will not be deprived of access to water.

Unopened Road Allowances Not Leading to Water:

These would include road allowances made by crown surveyors and road allowances on a registered plan of subdivision.

In some cases a highway does not follow a boundary line and deviates so that parts of it, although declared as a public highway, do not constitute an open publicly maintained road. There are also road allowances that have not been constructed and assumed by the Town. From time to time requests to purchase portions of these road allowances are received. Careful consideration will be given to the future potential of these road allowances.

Rights of Ingress and Egress

A road allowance shall not be stopped up and sold that will deprive any person of the means of ingress and egress to and from the person's land or place of residence or another convenient road or way of access to the land is provided.

Offer to Abutting Owners

A road allowance that has been declared surplus shall be offered for sale to the owners of the land abutting the land to be sold. The owner of each parcel on opposite sides of the land to be sold has the right of first refusal to purchase the land to its middle line, unless otherwise determined by Council (for example, encroachments).

If the person entitled to purchase the land does not exercise the right to purchase within a period of time as determined, the Town may sell the land to any other person as Council determines.

Notice & Procedure

All proposed sales of road allowances will be subject to the Sale of Land and Notice By-Law requirements.

Application

An application for the purchase of an unopened road allowance can be in the form of a letter. The letter must clearly state the reason for the request and as much information as possible with regards to the road allowances as is known. A plan/sketch must be attached to show the applicant's property and the land proposed to be purchased.

The application will be circulated to various agencies and operating departments, as required. Once comments have been received, a report will be presented to the appropriate Standing Committee of Council for a recommendation to declare the property surplus or not. The applicant can attend to answer questions. The public can attend to express support or opposition to the proposal. After proper notice has been given, Council will consider the application for a decision whether or not to sell the property.

SCHEDULE "B"

CERTIFICATE OF COMPLIANCE

**In Compliance with By-Law No. 2014-21 of the
Corporation of the Town of Wasaga Beach**

Certificate of Compliance in the sale or disposition of the real property described as:

I HEREBY CERTIFY THAT:

1. The Corporation of the Town of Wasaga Beach adopted By-Law No. 2014-21 on March 11, 2014, being a procedural by-law governing the sale or other disposition of real property and was in force on the date of the sale or disposition of the property described above.

2. The property was deemed surplus under By-Law or Resolution No. _____ enacted or passed on _____.

3. An appraisal of the fair market value of the property was obtained on _____.

4. The property sale or disposition is exempt from the requirement to obtain an appraisal of its fair market value under the following exemption:

5. Public notice of intent to sell or dispose of the property was given by the following method:

Clerk, Twyla Nicholson

Date