

THE CORPORATION OF THE TOWN OF WASAGA BEACH

BY-LAW 2023-109

A By-law to Adopt the Revised Sale of Surplus Land Policy

WHEREAS Section 270(1) of the Municipal Act, 2001, requires municipalities to adopt policies regarding the sale and other disposition of municipally owned land;

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;

AND WHEREAS at its meeting of November 16 2023, the Council of The Corporation of the Town of Wasaga Beach ("Council") approved the recommendations of Staff Report No. JCAC-2023-11-09, Subject: Revised Sale of Surplus Land Policy;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF WASAGA BEACH HEREBY ENACTS AS FOLLOWS:

1. That the Sale of Surplus Land Policy in the Town of Wasaga Beach, appended hereto as Schedule "A" and made part of this By-law be approved.
2. That By-law No. 2014-21 be hereby repealed.

BY-LAW READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 16TH DAY OF NOVEMBER, 2023.

THE CORPORATION OF THE TOWN OF WASAGA BEACH

Brian Smith, Mayor

Nicole Rubli, Director, Legislative Services & Clerk

Schedule "A" to By-law No. 2023-109

SECTION NAME: General Administration	POLICY NUMBER: 2-21
POLICY: Sale of Surplus Land	REVIEW DATE: November 2028
EFFECTIVE DATE: November 16, 2023	REVISIONS:
ADOPTED BY BY-LAW: By-Law No. 2023-109	ADMINISTERED BY: Director of Legislative Services & Clerk

Purpose:

To abide by section 270 of the *Municipal Act, 2001* (the "Act") that requires all municipalities to adopt and maintain a policy with respect to the sale and disposition of Real Property.

The Town of Wasaga Beach will dispose of surplus real property of the Corporation in an open and transparent process to ensure that returns are fair, reasonable, and in the best interest of the Town.

Standardization:

It will be the policy of the Town of Wasaga Beach, wherever possible, to standardize the disposal of Surplus Real Property to allow for the Town to:

- Divest itself from Real Property with little to no value to the Town;
- Maximize asset potential;
- Reduce risk or liability to the Town;
- Promote growth and development within the Town of Wasaga Beach;
- Institute fair and competitive bidding on Real Property;
- Apply a consistent and streamlined process with regard to the sale and disposal of Real Property.

PART 1 — Definitions

1.1. In this by-law:

- (a) **"Abutting"** shall mean a parcel of land adjoining another parcel of land having one (1) or more lot lines in common;

- (b) **"Affordable Housing"** generally refers to housing for low-to-moderate-income households priced at or below the average market rent or selling price for comparable housing in a specific geographic area; for the purposes of this Policy, the definition and interpretation shall be consistent with the definition in the *Development Charges Act*;
- (c) **"Applicant"** means a person who has inquired or requested to purchase Town land;
- (d) **"Appraisal"** means a fair market valuation of land prepared by an accredited Appraiser or the market value obtained by a licensed Real Estate Brokerage firm or a licensed independent Real Estate Agent;
- (e) **"Appraiser"** means a member in good standing of the Appraisal Institute of Canada, holding an Accredited Appraiser Canadian Institute or Canadian Residential Appraiser designation as appropriate;
- (f) **"As is"** means without regard for state of repair, location of any and all structures, walls, retaining walls or fences (freestanding or otherwise) or encroachment by buildings or fences or otherwise, on the land or adjoining properties or streets, and without warranty or representation as to use, environmental contamination, hazards or risks;
- (g) **"Attainable Housing"** generally refers to housing that is adequate in condition, appropriate in size and reasonably priced; for the purposes of this Policy the definition and interpretation shall be consistent with the definition in the *Development Charges Act*;
- (h) **"CAO"** means the Town's Chief Administrative Officer;
- (i) **"Council"** means the municipal Council of the Town of Wasaga Beach;
- (j) **"Director of Legislative Services and Clerk"** means the Director of Legislative Services and Clerk for the Town or his or her designate;
- (k) **"Director of Planning"** means the Director of Planning for the Town or his or her designate;
- (l) **"Disposal"** means the sale, transfer, conveyance, or exchange of the fee simple interest in land;
- (m) **"Easement"** means an interest in land transferred from one party to another, consisting of the right to use or control the land, or an area above or below it, for a specific limited purpose;
- (n) **"Encroachment"** means any type of vegetation, man-made object, or item of personal property which exists wholly or upon, or extends from a person's premises onto, public lands and shall include any aerial, surface, or subsurface Encroachments;
- (o) **"Expression of Interest" (EOI)** means a situation where vendors are solicited by the Town to advise of their ability or desire to undertake Town projects. This is not to obtain costs for services;

- (p) **"Full Marketability Land"** means land which would in the opinion of the Director of Legislative Services & Clerk, or designate, be of interest to potential purchasers in the open market due to size, shape, location, topography, environmental condition, permitted land uses, or any other factor which the Director of Legislative Service and Clerk, or designate, considers relevant;
- (q) **"Highway"** means:
- i. all highways that existed on December 31, 2002;
 - ii. all highways established by by-law on or after January 1, 2003;
 - iii. all highways transferred to the municipality under the *Public Transportation and Highway Improvement Act*;
 - iv. all road allowances made by the Crown surveyors located in the municipality; and
 - v. all road allowances, highways, streets, and lanes shown on a registered plan of subdivision;
- (r) **"Land(s)"** shall mean real property and any improvements thereon owned by the Town, including highways which have been or may be stopped up and closed, but does not include:
- i. any land which Council has otherwise determined by resolution or by-law is not available for sale;
- (s) **"Limited Marketability Land"** means land which would, in the opinion of the Director of Legislative Services and Clerk, or designate, be of limited interest to potential purchasers due to size, shape, location, topography, environmental condition, land use restrictions, or any other factor which the Director of Legislative Service and Clerk, or designate, considers relevant;
- (t) **"Market Value"** means the amount that the land might be expected to realize if sold in the open market by a willing seller to a willing buyer;
- (u) **"Official Plan"** means the Official Plan of the Town of Wasaga Beach, as amended or replaced from time to time;
- (v) **"Other Land Interests"** is the granting of an interest in land that is not a disposal of land, such as easements, leases, encroachments;
- (w) **"Real Estate Agent"** means an licensed professional in the Province of Ontario who represents buyers or sellers in real estate transactions;
- (x) **"Real Estate Broker"** means a Real Estate Broker registered under the *Real Estate and Business Brokers Act, 2002*, as amended and Regulations thereto;
- (y) **"Real Property"** means land and buildings which are owned by the Town of Wasaga Beach and includes Full Marketability Land and Limited Marketability Land;

- (z) **"Sale"** and **"Sell"** shall not include:
 - i. a lease of land by the Town;
 - ii. transfers of easement or rights-of-way by the Town;
 - iii. releases of restrictive covenants by the Town; and
 - iv. releases of rights of first refusal by the Town.

- (aa) **"Surplus"** means Real Property that is not required to meet the current or future program or operational requirements of the Municipality, and that has been declared surplus by Council or its delegated authority.

- (bb) **"Town Solicitor"** means and includes the Town's Solicitor or external legal counsel from time to time;

PART 2 - General

- 2.1 As part of the Town's efforts to create Affordable and Attainable Housing, Council and staff will review the suitability of Surplus Land for Affordable and Attainable housing before marketing and selling the parcel for redevelopment. The terms of this policy, with respect to the sale of land for Affordable and Attainable housing, are subject to modifications and exemptions on a case specific basis.

- 2.2 A by-law containing a legal description of the land and the identity of the purchaser shall be passed to approve the sale of land.

- 2.3 Land required for any municipal purpose, including but not limited to present or future municipal facilities, infrastructure and parks, is not available for sale to the public.

- 2.4 Any survey and/or reference plan required shall be obtained at the expense of the purchaser(s).

- 2.5 Council may impose conditions of sale if deemed appropriate.

- 2.6 All land, with or without improvements, shall be sold on an "As Is" basis unless Council determines otherwise.

- 2.7 The Town is under no obligation by virtue of the sale of land to grant any approvals, including approvals for changes to the Official Plan or Zoning By-law or with respect to site plan control, minor variances, and building permits, or to support approvals required by any other approval authority, which may be necessary for any contemplated use of the land by the purchaser.

- 2.8 Any provisions for public notice provided for in this policy shall prevail over any other existing or future public notice by-law passed by Council.

- 2.9 The purchaser(s) shall be responsible for the Town's legal fees unless otherwise specified in the Sale and Purchase Agreement.

PART 3 — Responsibility

3.1 Staff from the Planning Department and/or the Economic Development Department will:

- (a) periodically review Town-owned Land to determine which Land may be considered surplus, at very least Town owned land will be reviewed every five years to coincide with the Official Plan review;
- (b) consult with Town staff on lands that may be considered Surplus Land;
- (c) make recommendations to Council about declaring Lands surplus and seek Council's authority to offer the Land for sale;
- (d) pursue Disposals per this policy and make recommendations to Council or the CAO, as authorized through delegation;
- (e) obtain independent property Appraisals for Land in keeping with any requirements imposed by any applicable legislation, by-law, or this policy; and
- (f) report details if any Disposal to the appropriate departments and to the Town CFO/Treasurer or as they may further delegate for the purposes of maintaining accurate corporate records.

3.2 The Director of Legislative Services & Clerk shall determine if Town-owned land is Limited Marketable Land or Full Marketable Land in consultation with Staff.

PART 4 – Declaration of Surplus Property

4.1 Authority to Declare Lands Surplus

- (a) Where land has an estimated Market Value of \$25,000 or less as determined by an Appraiser, the Director of Legislative Services & Clerk or delegate is authorized to declare the Land surplus and to dispose of the Surplus land in accordance with this Policy.
- (b) Where land has an estimated Market Value greater than \$25,000 and not exceeding \$50,000, as determined by an Appraiser, the CAO is authorized to

declare the Land surplus and to approve the intended manner or process by which the Sale of Land will be carried out.

- (c) Where land has an estimated Market Value greater than \$50,000, as determined by an Appraiser, any declaration that the land is Surplus shall be made by Council.
- (d) Subject to paragraphs (a) and (b) above, Council shall, in a meeting open to the public, pass a resolution declaring any such land surplus prior to its disposal.
- (e) An annual report of all activities approved under the delegated authority in Section 4.1(a), and (b) of this Policy will be made by the Director of Legislative Services & Clerk to Municipal Council for information purposes.

PART 5 - Appraisals

- 5.1 One (1) Appraisal of the market value of land to be sold shall be obtained and prepared by one of the following as determined by the CAO:
 - (a) An independent qualified Appraiser.
 - (b) A Real Estate Brokerage Firm or an independent Real Estate Agent.
- 5.2 Notwithstanding section 5.1, the Director of Legislative Services & Clerk, or designate, may:
 - (a) dispense with the requirement of an Appraisal 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. Land for which the Town has obtained an Appraisal within the preceding one (1) year, in the discretion of the CAO, or designate.

PART 6 — Land Deemed to be Not Marketable

- 6.1 In addition to any other provisions herein, or any resolution or by-law passed by Council, the following lands are deemed to be not marketable:
 - (a) land situated in the Open Space or Environmental Protection designations of the Official Plan, as amended from time to time, in order to protect and promote the public enjoyment of natural features;
 - (b) Any land which Council has by resolution or by-law declared shall not be sold.
- 6.2 Town lands deemed to be not marketable are not available for sale to the public.

- 6.3 Where Town lands are deemed not marketable, but they have the potential to become marketable if an interested purchaser intends to merge their property to a property that is deemed not marketable, and the new parcel meets the minimum frontage and setback for an infill lot.

PART 7 – Land Surveys

- 7.1 Before the disposal of any Real Property, the Town shall obtain or require a survey of the land from an independent surveyor in accordance with the laws of the Province of Ontario. The cost of the survey will be borne in accordance with Section 2.4 of this Policy. The Director of Legislative Services & Clerk may waive this requirement if an existing survey is available.

PART 8 — Limited Marketability Land — Policy Statements

- 8.1 The following policy statements shall be applied to all Limited Marketability Land:
- 8.1.1 Limited Marketability Land may only be sold to an abutting owner(s) whose property if combined with the Town's land creates a configuration which is acceptable to the Director of Planning Services, or designate, in accordance with good planning principles.
- 8.1.2 Where appropriate, the land shall be required to legally merge in title with the abutting owner's property. Where necessary, Council shall pass a by-law deeming the Town land and/or the abutting owner(s) land not to be part of a registered plan of subdivision in order to effect the merger, and the by-law shall be registered on title by the Town prior to the registration of the Transfer/Deed to the purchaser. No fee shall be charged to the abutting owner for the preparation and registration of the Deeming By-law.

PART 9 — Process for Sale of Limited Marketability Land

- 9.1 The initial inquiry by a prospective purchaser (Applicant) shall be made to the Clerk's Department.
- 9.2 The request process for the sale of Limited Marketability Land shall be divided into phases, as follows:

9.2.1 PHASE 1 — Preliminary Review

This policy shall be reviewed to determine its applicability, and the Applicant shall be advised accordingly.

9.2.2 PHASE II – Circulation

Staff shall conduct a formal circulation to internal departments and any outside agencies as appropriate, to determine any objections to the sale or conditions

which may be required. The Applicant shall be advised of the results of this circulation. In addition, a site visit may be conducted by Town staff to determine any municipal requirements which may need to be addressed upon a sale.

9.2.3 PHASE III — Collection of Deposit and Appraisal

- (a) Should the Applicant wish to proceed with the request to purchase the land, the deposit provided for in Part 10 shall be required.
- (b) Following receipt of the deposit, an Appraisal of the land shall be obtained in accordance with Part 5 of this Policy.

9.2.4 PHASE IV — Notice to Abutting Owners and Disclosure of Appraisal

- (a) The Applicant shall be advised of the appraised value and be required to submit his/her written offer to purchase the land at the appraised value within three (3) weeks, failing which, he/she shall be deemed to have declined to purchase the land.
- (b) All abutting property owners shall also be sent notice via regular mail of the following:
 - (i) a request to purchase Town land has been received;
 - (ii) the identity of the Applicant; and
 - (iii) the appraised value;

and shall be required to submit any comments or objections to the sale of the lands in writing, or, submit the deposit as provided in Part 10 together with their offer in writing to purchase the lands at the appraised value, within three (3) weeks from the date of such notice, failing which, they shall be deemed to have no objection nor any interest in purchasing the land. Comments and objections will become part of the public record and included in any subsequent Report to Council.

- (c) In the event that:
 - (i) an abutting owner submits their written offer to purchase the land at the appraised value, and
 - (ii) provided dividing the land equally between the Applicant and the abutting owner would create a configuration acceptable to the Director of Planning, or designate, in accordance with good planning principles,

then, the Applicant and the abutting owner may agree to divide the land equally between them with the purchase price and all survey/reference plan costs shared proportionately. In the event that a consensus cannot be arrived at, all interested abutting owners will be requested to provide the Town with an offer for the entire Limited Marketable Land.

Following receipt of the Applicant's and/or another abutting owner's written offer to purchase the land at the appraised value and payment of the deposit required in Part 10, a report shall be submitted to Council for approval, with staff's recommendations.

- 9.3 The Agreement of Purchase and Sale shall be prepared by the Town in a form satisfactory to the Town Solicitor, who shall have authority to determine and extend the time for closing real estate transactions.
- 9.4 The Transfer/Deed of Land and Land Transfer Tax Affidavit, or electronic version thereof, shall be prepared in registrable form at the expense of the purchaser.
- 9.5 In the event that sale of the land is not completed within one (1) year from the date on which Council passes the by-law authorizing the sale, subsequent requests shall be subject to the provisions of this Policy in all respects. Discussions regarding the Disposal of Real Property may be held in a closed session of Council as defined in the *Municipal Act, 2001*, as determined by the Clerk.
- 9.6 Any discussions made by Council as a result of closed session discussions regarding Disposal of Real Property in a closed session shall be reported out in a public session by official resolution, as required by the provisions of the *Municipal Act, 2001*.

PART 10 — Limited Marketability Land — Payment of Deposit

- 10.1 A deposit in the amount of \$300.00 shall be required as follows:
- (a) If the sale of land is prohibited in this policy, and the Applicant wishes to proceed, then the deposit is payable before proceeding to Phase II;
 - (b) If the sale of the land to the Applicant will be recommended, payment of the deposit shall be required prior to ordering an Appraisal and submitting a Report to Council;
 - (c) Following notice, if another abutting owner provides his or her written offer to purchase the land at the appraised value, such owner shall be required to submit payment of the deposit with his written offer to purchase the land.
- 10.2 The deposit shall be applied to the purchase price or forfeited, at the times and in the circumstances set out below:

In the event that:

- (i) the Applicant abandons the request before a Report is submitted to Council, the deposit shall be forfeited without interest or deduction;

OR

the sale of land is:

- (ii) not recommended by staff, and Council denies the request, the deposit shall be refunded without interest or deduction;
- (iii) recommended by staff, and Council denies the request, then the deposit shall be refunded without interest or deduction;
- (iv) approved by Council, and the Applicant does not complete the transaction for any reason other than one which may be contemplated in the Agreement of Purchase of Sale, the deposit shall be forfeited without interest or deduction.

- 10.3 Should a tendering process occur:
- (i) the deposit paid by the successful bidder shall be applied towards the purchase price if the sale is approved and the transaction is completed;
 - (ii) the deposit paid by the unsuccessful bidder shall be refunded without interest or deduction;
 - (iii) and the successful bidder does not complete the transaction for any reason other than one which may be contemplated in the Agreement of Purchase of Sale, the deposit shall be forfeited without interest or deduction.

PART 11 – Methods of Sale

- 11.1 Depending on the nature of the land, various methods may be employed for the disposal of land including public auction, tender process, listing through MLS, and direct advertising. The Clerk's Department shall be responsible for determining the appropriate method to use.
- 11.2 If the Town receives an Expression of Interest to purchase Real Property, the Town may directly negotiate the sale of said property with the potential buyer upon Council's approval.
- 11.3 Limited Marketability Land which cannot be rendered Full Marketable Land by means of consent under the Planning Act may be sold directly to the abutting property owner(s). Sale of this type of property will be done for no less than on a full cost-recovery basis, including, but not limited to, consulting fees, legal fees, disbursements, advertising, improvements and administrative costs.
- 11.4 All offers to purchase Full Marketability Land from the Town by means of an Agreement of Purchase and Sale must be accompanied by a deposit in an amount determined by the Director of Legislative Services and Clerk or designate and shall be the greater of \$1,000 or 5% of the offered purchase price. Unless otherwise directed by Council, all Disposals will be on a cash basis. If the CAO is of the opinion that exceptional and specific circumstances exist, that would warrant consideration of a Disposal on something other than a cash basis, a report will be presented to Council for consideration.
- 11.5 The Agreement of Purchase and Sale shall be in a form satisfactory to the Town Solicitor.

PART 12 - Notice Requirements

- 12.1 Once Lands have been declared Surplus, notice to the public shall be provided on the Town's Website and include the following:
- (a) That the lands have been declared surplus to the Town's needs;
 - (b) The municipal address, legal description and/or key map to identify the lands to be sold;
 - (c) The method of sale;

- (d) The name and contact person who can respond to questions;
 - (e) The proposed date and time of the meeting where the sale of land will be considered by Council.
- 12.2 If a decision is not made at the specified Council meeting, no further notice is required provided that a resolution is passed indicating Council's decision. This shall also apply to any further referrals or deferrals of the matter.
- 12.3 Any person may submit an objection to the Director of Legislative Services & Clerk in writing and include the person's name, address and reason(s) for the objection. Council will consider all comments received prior to a sale commitment.

PART 13- Reports to Council

- 13.1 When Council is presented with a report considering the declaration of Real Property to be surplus, the report shall include at minimum:
- a) A description, location, and sketch of the subject Real Property and its current uses.
 - b) The reason why the Real Property should be declared surplus to the Town's needs.
 - c) Associated risk with selling or not selling the Real Property.
 - d) Persons, corporations, authorities, local boards, and bodies that should be contacted and notice given (other than the general public notice).
 - e) Whether an Expression of Interest has been provided for the subject Real Property and details provided therein.
 - f) The method of disposal.
 - g) Recommendations to terms and conditions of a potential disposal.
 - h) When Council is presented with a report to consider an offer to purchase Real Property from the Town, the report shall include at a minimum:
 - i. A summary of the process used to offer the Real Property for Disposal and results thereof.
 - ii. Potential purchaser and offered price for the subject Real Property.
 - iii. Proposed future use of the property.

PART 14 – Non-Application of Policy

- 14.1 This policy is not applicable to the Disposal of land where:
- a. The transaction is governed by the federal and/or provincial government:
 - i. The sale of lands for Tax Arrears as indicated in the *Municipal Act, 2001*;
 - ii. The expropriation of land under the *Expropriations Act, 1990*; and
 - iii. Any other situations as governed by provincial or federal legislation.
- 14.2 The Town is transferring Real Property to a corporation in which the Town is the sole shareholder, and the transaction is completed in accordance with Council direction.
- 14.3 The procedures for the closure of highways shall be in accordance with the *Municipal Act, 2001*, as amended, and other relevant statutes.
- 14.4 The transaction is completed in accordance with Council direction 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 Town limits.
- 14.5 A closed alley, closed road, road allowance or right-of-way is conveyed to an abutting property owner(s) and the transaction is completed with Council direction.
- 14.6 The transaction involves Other Land Interest and is completed in accordance with Council direction or other approved by-laws or policies.

PART 15 - Application and Administration of Policy

- 15.1 This policy shall be read and applied fairly with such variations as circumstances or the nature of the subject matter require provided the general purpose, intent, meaning and spirit of the policy are maintained.
- 15.2 The Clerk's Department shall be responsible for developing and implementing forms and procedures for the administration of this policy by Town Staff. The Town Solicitor shall be responsible for the closing of sale transactions.