

The Corporation of the City of Pembroke

By-Law Number 2023-36

A by-law to adopt a Sale and Disposition of Land Policy for the Corporation of the City of Pembroke

Whereas, the *Municipal Act, 2001*, as amended, provides that a municipality has the capacity, rights, powers, and privileges of a natural person for the purpose of exercising its authority under the Municipal Act or any other Act; and

Whereas, the *Municipal Act, 2001, as amended*, provides that powers of a municipal corporation are to be exercised by its council through the adoption of by-laws; and

Whereas the *Municipal Act*, indicates that a Municipality shall adopt and maintain policies with respect to its sale and disposition of land; and

Whereas the Council of the Corporation of the City of Pembroke deems it expedient to adopt a Sale and Disposition of Land Policy.

Now Therefore the Municipal Council of the Corporation of the City of Pembroke enacts as follows:

1. That the Sale and Disposition of Land Policy, attached hereto and marked as "Schedule "A", to this by-law be hereby adopted.
2. That this by-law shall come into force and take effect upon the date of the final passing thereof.

Passed and enacted this 16th Day of May 2023

Ron Gervais
Mayor

Heidi Martin
Clerk

Schedule “A” to By-law 2023-36
Sale and Disposition of Land Policy for the Corporation of the City of Pembroke

1. Policy Statement

In accordance with Section 270 of the Municipal Act, 2001, c.25, as amended, this Policy ensures that any dispositions of land are conducted in a manner that fosters public trust and supports the following policy statements:

- The process is fair, open and transparent;
- The City’s current and future interests are protected;
- The City considers the value of its real property assets;
- Any potential or real risks to the environment, the health and safety of residents and the financial integrity of the City are minimized.

This policy applies to all financial and legal transactions involving the sale or other disposition of City-owned land unless otherwise exempted under this Policy.

The following exemptions shall apply:

- a) Land sold in accordance with Section 110 of the Municipal Act (Agreements for Municipal Capital Facilities);
- b) Land to be used for the establishment and carrying on of industries and industrial operations and incidental uses;
- c) Land sold under Part XI of the Municipal Act (Sale of Land for Tax Arrears) and any related Ontario Regulation made by the Minister;
- d) Easements over municipally owned lands, as approved by Council;
- e) Land 0.3 metres or less in width acquired in connection with an approval or decision under the Planning Act, R.S.O. 1990, c. P. 13 as amended; or
- f) Land repurchased by an owner in accordance with Section 42 of the Expropriations Act, R.S.O. 1990, c. E. 26 as amended.

2. Responsibility

The Chief Administrative Officer (or their designate) shall be responsible to ensure that all sales and other dispositions of land are completed in compliance with this Policy.

3. Definitions

“Abutting Land” means real property that directly borders the municipality’s land parcel. In the case of the disposal of a closed highway, abutting land is considered real property that is immediately to the side of the closed highway.

“Appraisal” means a written opinion of the market value of the land prepared by a registered member of the Appraisal Institute of Canada, the assessed value as determined by the Municipal Property Assessment Corporation (MPAC), or other person(s) deemed by Council to be qualified for the purpose identified herein.

“Appraised Value” means the value noted the appraisal, or the assessed value as determined by the Municipal Property Assessment Corporation (MPAC).

“Chief Administrative Officer” means the municipal employee appointed by Council to serve as the Chief Administrative Officer in accordance with Section 229 of the Municipal Act.

“Council” means the duly elected Municipal Council of the Corporation of the City of Pembroke.

“Disposition” means the sale, transfer, conveyance or exchange of the Fee Simple Interest in Real Property, or the granting of a permanent easement or right-of-way but does not include the granting of a short-term Lease or a License of Occupation or the release of easement or right of way by the City. A lease of twenty-one (21) years or longer shall be considered a disposition. For clarity, “Sale” shall have a similar meaning.

“Fair Market Value” means the highest amount that real property might be expected to realize if sold in the open market by a willing seller to a willing buyer.

“Fee Simple Interest” means an ownership of Real Property in which the owner has the right to control, use or dispose of the Real Property at will.

“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.

“Local Board” means a local board as defined in Part I of the Municipal Act.

“Non-viable property” means property that, owing to urban planning, physical constraints or the extent of the property, cannot be developed on its own or function as a separate entity and that can therefore become functional only if used by an adjoining owner in conjunction with such owner’s property. Non-viable lands can be a potential liability to the municipality and/or are determined to be of a size, shape or nature for which there is no general demand. This includes land for which a building permit cannot be granted because either it is landlocked or because it is of insufficient size and shape to permit development unless developed in conjunction with abutting land.

“Viable property” means property that can be developed and function as a separate entity capable of registration by the Ontario Land Registry Office. Viable lands are lands that can be granted a building permit.

4. Registry of City-Owned Surplus Lands

The Economic Development Officer shall establish and maintain a public registry of surplus real property assets owned by the City of Pembroke.

The following real property assets shall be excluded from the register:

- a) Land 0.3 metres or less in width acquired in connection with an approval or decision under the Planning Act as amended.

5. Viable and Non-Viable Land

Subject to the discretion of Council, all surplus lands will be designated as either viable land or non-viable land and their respective disposition processes may be treated differently.

6. Applicant-Initiated Land Disposal

A prospective purchaser may submit an expression of interest in particular City-owned land(s) through the submission of an Offer to Purchase.

7. Property Valuation

The City shall obtain a property valuation for the parcel in question, subject to the following requirements:

- a) If the parcel is considered to be non-viable land, a value of \$12,000 an acre, which is the City of Pembroke's value for the sale of industrial land, shall apply.
- b) If the parcel is considered to be viable land, an appraisal shall be required.

Any property valuation obtained shall be used solely as a guide and shall not be determinative of the terms of price upon which Council may sell any particular parcel. Without limiting the generality of the foregoing, other factors, including the history of the parcel or related properties, may be considered.

Notwithstanding the requirements outlined in the property valuation section, Council shall have the absolute authority to determine the selling price of the land.

Notwithstanding the requirements outlined in the Property Valuation Section, the City will not be required to obtain a property valuation, unless Council directs otherwise, for any class of land as follows:

- a) Closed highways if sold to an owner of abutting land;
- b) Land formerly used for railway lines if sold to an owner of abutting land;
- c) Land that does not have direct access to a highway if sold to the owner of abutting land; or
- d) Land transferred to another municipality or the Crown in right of Ontario or Canada including their local boards and agencies.

8. Declaration of Surplus Land

Before land may be disposed of, Council shall adopt a resolution declaring the subject lands to be surplus to the needs of the municipality and determining the viable/non-viable classification of the subject lands.

The passage of a resolution declaring land to be surplus does not obligate the City to dispose of such lands and such a declaration may be rescinded by resolution at any time prior to the competition of the disposal.

9. Method of Disposal

Council shall determine in its sole discretion, by resolution, to dispose of the surplus land by any of the following methods:

- Direct Sale / Negotiation
- Request for Tender (RFT)
- Listing with Real Estate Agent / Broker
- Land Exchange

9.1 Direct Sale / Negotiation

Direct sale and/or negotiation may be selected with the following considerations:

- The negotiated price shall be determined to be not less than the appraised value plus costs as identified in the Recovery of Costs Section for viable land and for non-viable lands the price shall be determined at a cost of \$12,000 per acre.
- The Chief Administrative Officer shall be authorized to negotiate a direct sale upon direction of Council.
- The Chief Administrative Officer shall submit all final offers to Council for review.

9.2 Request for Tender (RFT)

In accordance with the City's Procurement Policy, Council may direct that surplus lands be disposed of by a Request for Tender (RFT) process.

9.3 Listing with Real Estate Agent / Broker

Listing by the City or its agent with one or more property listing services may be selected with the following considerations:

- The listing price shall be determined to be not less than the appraised value plus costs as identified in the Recovery of Costs Section.
- The Chief Administrative Officer shall be authorized to sign the listing agreement upon direction of Council.
- The Chief Administrative Officer shall submit all final offers to Council for review.

9.4 Land Exchange

A land exchange involves a reciprocal transfer of land of an equivalent value (monetary or public interest) in whole or in part. Such exchanges may be negotiated with the following considerations:

- The negotiated price shall be determined to be not less than the appraised value plus costs as identified in the Recovery of Costs Section.

- The Chief Administrative Officer shall be authorized to negotiate a direct sale upon direction of Council.
- The Chief Administrative Officer shall submit all final offers to Council for review.

10. Public Notice

The City shall provide at least twenty (20) days public notice of the proposed disposal of viable surplus land. The method of notice will be by posting on the City of Pembroke's website.

The City shall provide at least twenty (20) days notice to the abutting property owners of the proposed disposal of any non-viable land. The method of notice will be by mail or email to the abutting property owners.

Should any submissions or concerns be received from the public, such comments shall be considered by Council during an open public meeting and prior to the by-law authorizing the sale being passed.

11. Recovery of Costs

All costs incurred or anticipated to be incurred to dispose of the land, including but not limited to, legal fees, surveying costs, appraisal fees, encumbrances, advertising and improvements, shall be borne by the purchaser.

12. Offer Evaluation, Acceptance of Offers and Certificate of Compliance

All bids, proposals and offers shall be presented to Council unless Council has given direction to staff to negotiate the disposition by another method.

Council shall have the authority to determine the successful offer. Council shall pass a by-law authorizing the disposition and directing the Mayor and Clerk to execute an Agreement of Purchase and Sale, in consultation with the City Solicitor and other appropriate staff as needed.

Council reserves the right to accept an offer less than the appraised value including costs where, in the opinion of Council, it is in the best interests of the municipality to do so.