



THE CORPORATION OF THE TOWN OF ERIN

By-Law #22 – 20

**Being a By-law to establish corporate policies
And procedures for the sale, disposition
And Acquisition of real property by the
Corporation of the Town of Erin**

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 the Council of the Corporation of the Town of Erin deems it desirable to establish consistent, transparent and accountable policies and procedures for the disposition of real property assets by the Town;

And whereas the Council of the Corporation of the Town of Erin wishes to ensure the returns for land disposition and acquisition are fair, reasonable and transparent and in the best interest of the Town;

Now, therefore be it resolved that the Council for the Corporation of the Town of Erin hereby Enacts as follows:

1. **THAT** Schedule "A" "Draft Corporate Policies and Procedures for Disposition of Land" attached hereto forms part of this by-law.
2. **THAT** by-law #17-19 is hereby repealed.
3. **THAT** this by-law may be cited as the "Real Property Disposal By-law".
4. **THAT** this By-law shall come into force on the date it is passed by the Council of the Corporation of the Town of Erin.

Passed in open Council on April 28, 2022.

Mayor, Allan Ails

Clerk, Lisa Campion

Schedule “A”

Town of Erin Corporate Policies and Procedures for Disposition of Land

1. Policy Statement

These policies and procedures apply to the disposition of land by the Corporation of the Town of Erin (“the Town”). The Town may dispose of property as a result of an inquiry from the public or as a result of internal municipal actions consistent with Town-mandated programs, projects and policies. This policy aligns with the Town’s Strategic Plan goal of investing in community assets.

2. Purpose

This Policy has three purposes.

- (1) It ensures compliance by the Town with section 270(1) of the *Municipal Act, 2001*, as amended, which requires municipalities to adopt policies regarding the sale and other disposition of municipally owned land.
- (2) It establishes a consistent, transparent, and accountable procedure to be followed in the disposition of land owned by the Town.
- (3) It ensures the returns to the Town obtained in the process of disposing of its land are fair, reasonable and in the best interest of the Town.

3. Application

This policy applies to all Town employees; elected officials; all agents acting on behalf of the Town on real property matters including any real estate brokers authorized to dispose of land on behalf of the Town.

4. Definitions

In this Policy, the following terms shall have the following meanings:

“**Abutting**”: means a parcel of land adjoining another parcel of land having one or more lot lines in common;

“**Appraisal**”: means a written valuation of the fair market value of land, performed by an independent, certified appraiser who is an accredited member of the Appraisal Institute of Canada;

“**as is, where is**”: Shall mean without representation, warranty or condition respecting the fitness, developability, intended use, existence of encroachments,

location of any and all buildings or structures, state of repair of any and all buildings or structures, planning approvals, the timing or cost of development, condition, zoning, environmental state, risks, soil conditions, physical condition, or lawful use of the real property in question;

“Disposition”: means the sale, transfer, conveyance or exchange of the fee simple interest in land or the granting of a lease of 21 years or longer;

“Highway” means the following Land:

- (1) All highways that existed on December 31, 2002;
- (2) All highways established by by-law on or after January 1, 2003;
- (3) All highways transferred to the municipality under the *Public Transportation and Highway Improvement Act*;
- (4) All road allowances made by the Crown surveyors that are located in municipalities;
- (5) All road allowances, highways, streets and lanes shown on a registered plan of subdivision.

“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;

“Town”: means the Corporation of the Town of Erin; and,

“Town-Mandated”: means initiatives that support the Town of Erin’s Strategic Priorities, Official Plan or Capital Program.

5. Principles Governing the Disposition of Land

In general, land shall be disposed of in accordance with the following principles unless an exemption applies:

- (1) Land must be declared surplus to municipal needs prior to disposition. Land that is required for present or anticipated future municipal purposes shall not be disposed of.
- (2) Unless it is municipally initiated, disposition of land will be undertaken by the Town on a full cost recovery basis. Without limitation, all legal, consulting, appraisal, survey, and other related fees incurred by the Town in connection with the disposition shall be paid by the purchaser.
- (3) In circumstances where there are exceptional circumstances such as delays or other criteria, staff can recommend to Council the waiving of some or all of the ancillary fees.

- (4) Generally, Land will be disposed of on a quarterly basis. However, in situations where it is deemed necessary by staff or Council, Land may be disposed of on a "as is where is" basis.
- (5) Prior to disposing of any land, at least one Appraisal shall be obtained to determine the fair Market Value of the land.
- (6) Except for the negotiation of the terms and conditions of an Agreement of Purchase and Sale pursuant to subsection 6(6) of this Policy, the disposition of land shall be undertaken as a public process with adequate notice in order to provide for an opportunity for public scrutiny and input. However, once finalized the APS should be made public.
- (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.
- (8) Council may impose additional conditions of sale if deemed appropriate based on individual circumstances.

6. General Process of Disposing of Land

Before any disposition of surplus land by the Town, the following steps shall be undertaken, unless an exemption applies:

- (1) The land shall be declared surplus by Resolution of Council in accordance with the procedures of this policy.
- (2) The method by which the land is to be disposed of shall be approved by Council.
- (3) The means by which the costs associated with the disposition will be recovered must be approved, by Council.
- (4) At least one appraisal shall be obtained as required by this Policy.
- (5) Notice of a proposed disposition shall be provided to the public in accordance with the Town's Notice By-law.
- (6) The Terms and Conditions of the Agreement of Purchase and Sale must be negotiated.

6.1 STEP ONE – Land to be Declared Surplus

Except where this policy provides otherwise, all land must be declared surplus to Town needs by Resolution of Town Council prior to disposition. The decision whether to declare a piece of land surplus shall be made at the discretion of Council, taking into account the recommendations of staff, as applicable.

The process for considering whether to declare land surplus may be initiated either by the Town or in response to a request from a third party to acquire a particular piece of land which is initiated through the submission of a completed form attached hereto as Appendix "1".

Prior to declaring lands surplus, Council will consider the advice and recommendation of staff which shall be solicited in the following manner:

- (1) Notice that the lands are being considered to be declared surplus shall be circulated to all departments by appropriate staff, as determined by the Chief Administrative Officer (CAO), for comment to determine whether they are required for the present or future needs of the Town and whether the disposition would be consistent with the strategic goals of the Town.
- (2) Staff shall base their recommendation of whether to declare lands surplus on a consideration of the following non-exclusive list of factors:
 - (i) **The current use of the lands.** Lands that are actively being used for municipal purposes by the Town shall generally not be recommended for disposition. This shall include lands beneath which municipal services are located or upon which storm drainage or storm management facilities exist either naturally or as a result of man-made structures.
 - (ii) **The location of the lands.** Lands that are located within the Urban Area as designated in the Town of Erin Official Plan shall generally not be recommended for disposition.
 - (iii) **The potential use of the lands for public purposes.** Lands that may be suitable for parkland, recreational, transportation, public housing, infrastructure, or other public purposes shall generally not be recommended for disposition. In considering this factor staff shall have regard for the objectives and goals outlined in municipal strategic and planning documents such as the Town of Erin Official Plan, the Town of Erin Strategic Plan and the Parks, Recreation, and Culture Master Plan among others.

- (iv) **Whether the lands are environmentally sensitive.** Lands that contain sensitive natural heritage features should generally not be recommended for disposition unless they are proposed to be transferred to a Conservation Authority or other public agency.
- (v) **Whether the lands have any archaeological or cultural significance or value.** Lands that either may possess or have known archaeological or cultural heritage significance or value will generally not be recommended for disposition.
- (vi) **The development potential of the lands.** Where in the opinion of staff the lands have a good development potential this will mitigate against a recommendation that they be declared surplus unless it has also been established that the lands are not needed for a public purpose.
- (vii) **The size, dimensions, shape, and topography of the lands.** Where lands are of such a small size or have dimensions, a shape, or topography that would not easily lend themselves to being used for a municipal purpose either on their own or in combination with adjacent lands this will generally mitigate in favour of disposition provided that the lands are proposed to be purchased by an abutting landowner and merged with the abutting property.
- (viii) **Whether the property has access to a public highway.** Where the land does not currently have access to a public highway this will generally support a recommendation to declare the lands surplus.
- (ix) **Lands previously encumbered.** Lands for which an interest has already been granted to another person or public body (such as an easement, an encroachment, or a right of way) and lands which a prior owner or public body has reserved unto themselves, certain rights or profits a prendres with respect to the lands (such as an easement, an encroachment, a right of way, mining rights, timber removal rights and miscellaneous substrata rights) shall generally not be recommended for disposition.
- (x) **Lands abutting a body of water.** Lands that abut a body of water such as original shore road allowances shall generally not be declared surplus unless they are proposed to be conveyed to an abutting owner of land (provided such disposition otherwise complies with the policies).
- (xi) **How the lands are designated in the Official Plan and zoned in the Zoning By-law**

- (3) Once departmental comments have been received, a report shall be prepared by the Planning Department and be submitted to Council recommending:
- (i) whether the land should be declared surplus;
 - (ii) the suggested method for disposal of the land based on the criteria established through this policy; and,
 - (iii) requesting authority for staff to negotiate the terms and conditions of the proposed disposition in accordance with this policy.
- (4) Provided that Council approves a recommendation to declare the land surplus, a Resolution to declare the property surplus or required, will be submitted to Council by staff.

The following classes of land shall be exempt from the requirement to be declared surplus prior to sale:

- (1) Closed highways.
- (2) Land that is transferred to another government body or public utility in exchange for other land for road allowance or road widening purposes within the geographic limits of the Town of Erin.
- (3) Land that is transferred by the Town to a developer through the site plan or subdivision development process in exchange for land of equal or greater value.
- (4) Land acquired as a road widening or part of a road widening in connection with an approval or decision under the *Planning Act*, as amended, including road widening lands being conveyed, in whole or in part, back to the original owner of the land or their successor in title.
- (5) Land repurchased by an owner in accordance with section 42 of the *Expropriations Act*.
- (6) Land conveyed to a person by the Town as part of the settlement of litigation proceedings.
- (7) Lands formerly used as railway lands, if sold to an abutting owner.
- (8) Land to be conveyed to the Crown in the Right of Ontario or of Canada and their agencies.

6.2 STEP TWO - Methods of Disposition

Council shall approve by Resolution, the method of disposition after considering a recommendation by staff.

Methods of Disposition

Council may authorize staff to dispose of land by any of the following methods:

- (1) listing the land on the Multiple Listing Service (MLS);
- (2) direct advertising;
- (3) direct negotiations with purchaser;
- (4) a public call for tender;
- (5) a public call for proposals; or,
- (6) public auction.

6.3 STEP THREE: Costs

Cost Recovery for Disposition of Land

The Town shall generally require the purchaser to be solely responsible for all costs incurred by the Town to dispose of any property, which costs may include, but are not limited to: legal, survey, appraisal, removal of encumbrances, advertising, improvements and administration fees if not sold by a registered real estate agent and/or agency, and real estate commissions if sold by a registered real estate agent and/or agency.

6.4 STEP FOUR: Obtaining an Appraisal

Prior to the disposal of land by the Town, at least one (1) appraisal of the fair market value of the land shall be obtained by the Planning Department from a certified appraiser who is a member of the Appraisal Institute of Canada.

Where the estimated value of the property is in excess of \$1,000,000.00 two (2) appraisals shall be required.

If it is not practical or economical to obtain an appraisal as determined by Staff then an appraisal will not be required. Circumstances in which it would not be practical or economical to obtain an appraisal include, but are not limited to, when the estimated value of the land is less than \$5,000.00, or when the estimated cost of obtaining the appraisal would be more than 50% of the estimated value of the land.

When an appraisal is obtained, it shall state the criteria used to determine value of the land.

Where there is a variance of greater than 10% between the appraised fair market value of the land and the proposed sale price of the land, and the proposed sale price is less than the appraised fair market value of the land, the variance shall be approved by Council. Where there is a variance of 10% or less between the appraised fair market value of the land and the proposed sale price of the land, and the proposed sale price is less than the appraised fair market value, the variance may be approved by the CAO and reported to Council.

An appraisal shall remain current for a period of one year from the date of the appraisal. In the event that the land is not disposed of by the Town within one year of the date of the most recent appraisal, an updated appraisal by a certified appraiser, shall be required.

Notwithstanding that certain lands are exempted from the requirement for a declaration of surplus prior to disposition an appraisal shall be required for those lands prior to any disposition.

6.5 STEP FIVE: Provision of Public Notice

Once an appraisal has been obtained and before disposing of any surplus land, planning staff shall publish a notice of the proposed disposal, as set out follows.

(a) General Notice Requirements

The notice of the proposed disposition shall require:

- (1) Publication in a newspaper of general circulation within the Town of Erin at least 14 days prior to the disposition of land;
- (2) Posting of a notice on the Town's website at least 14 days prior to the disposition of land;
- (3) Circulation of the notice of the proposed sale to all abutting landowners by regular mail.

A notice of the proposed disposition shall contain the following information:

- (1) The municipal address or legal description of the land and a location map deemed sufficient to identify the lands by the planning department;
- (2) The name, title and telephone number of staff having information about the proposed disposition;
- (3) A general description of the method of disposition; and,

(4) Clarification that anyone wishing to comment on the proposed disposition may do so by delivering such comments in writing to Planning staff by a specific date.

(b) *No Notice Required*

Lands that have been exempted from the requirement for a declaration of surplus prior to disposition shall also be exempted from the requirement to provide public notice of the disposition of land.

6.6 STEP SIX: Negotiation of Terms and Conditions and Agreement of Purchase and Sale

Once public notice has been provided and staff have negotiated the key terms and conditions of the disposition, a Report shall be prepared by the Planning and Development and be brought forward to Council for approval of the disposition, unless an exemption applies.

Once Council has approved the disposition, including the key terms and conditions of the transaction, an Agreement of Purchase and Sale shall be prepared by the Planning staff. The Municipal Solicitor and the CAO shall have the authority to negotiate any additional terms and conditions in the Agreement of Purchase and Sale with the purchaser or the seller, provided the additional terms and conditions protect the rights and interests of the Town, and all other steps have been followed.

In the case of land that is proposed to be sold to an abutting landowner steps shall be taken to ensure that this land merges with the abutting parcel of land for the purposes of the *Planning Act* such that no further conveyance would be permitted without a severance. This should normally include a requirement that a restrictive covenant be registered, or a deeming by-law be passed in the case of lots on a plan of subdivision, in order to achieve the foregoing.

The CAO shall have the authority to approve the final terms and conditions in the Agreement of Purchase and Sale on behalf of the Town and execute the Agreement of Purchase and Sale on behalf of the Town.

Certain Dispositions Exempt from Council Approval

The following minor land dispositions shall be exempt from the requirement to receive Council approval pursuant to this policy:

- (1) Agreements to convey lands originally transferred to the Town as a road widening(s) in connection with an approval or decision made under the Planning Act back to the original owner, or their successor in title, either in whole or in part.
- (2) Land that is transferred to another government body or public utility in exchange for other land for road allowance or road widening purposes within the geographic limits of the Town of Erin.
- (3) Land that is transferred by the Town to a developer or property owner through a site plan agreement or subdivision agreement, in exchange for land of equal or greater value.
- (4) In the event that an Agreement of Purchase and Sale is required for a disposition of land, and the disposition of land does not require the approval of Council then the CAO shall have the authority to approve the terms and conditions of the Agreement of Purchase and Sale, and to execute the same on behalf of the Town.

7. Exemptions from Policy

This policy shall not apply to the following classes of land unless otherwise directed by way of Council resolution:

- (1) Land that is acquired by a public body including a municipality, a Local Board including a school board or conservation authority and the Crown in the right of Ontario or Canada and their agencies;
- (2) Land sold under sections 107, 108, 110, 203 and Part XI of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended;
- (3) Land sold pursuant to sections 11 and 42 of the *Expropriations Act*, R.S.O. 1990, c. E. 26, as amended;
- (4) Land sold pursuant to sections 28 and 60 of the *Planning Act*, R.S.O. 1990, c. P. 13



Inquiry Respecting Purchase of Municipal Lands

For Office Use	Application Fee Received:
	Date Received:
	File Number:

1. Applicant Information		
Name(s):		
Address:		Municipality:
Phone:	Email:	Postal Code:
City/Town:		

2. Location of Municipal Property		
Address:		
Legal Description:		
Assessment Roll No.:		
PIN No.:		
Lot area:	Lot Depth:	Lot Frontage:
Does the municipal property abut your property? (circle)		Yes No
Is the request to acquire all or part of the property? (circle)		All Part*
<i>*If part, please enclose sketch showing part subject to request</i>		

3. Abutting Owner Contact Information (if applicable)		
Name(s) of Registered Owner(s):		
Address:		Municipality:
Phone:	Email:	Postal Code:
City/Town:		
Name(s) of Registered Owner(s):		
Address:		Municipality:
Phone:	Email:	Postal Code:
City/Town:		
<i>Attach additional sheets as required</i>		

4. Additional Information

5. Applicant Consent and Authorization

I/We, _____,
being the applicant(s), hereby acknowledge and agree as follows:

1. This inquiry is non-binding on either the applicant or the Town of Erin with respect to the completion of any proposed sale of land;
2. Any proposed sale of land is subject to approval by Council for the Town of Erin at its sole discretion in accordance with the Town's *Corporate Policies and Procedures for Disposition of Land*;
3. All legal, consulting, appraisal, survey, and other related fees without limitation incurred by the Town in connection with the proposed sale of land shall be reimbursed by the applicant.
4. Any and all supporting material including this application, surveys, sketches, photographs submitted along with this application are public information and shall form part of the public record. The applicant(s) therefore consents to the copying and release of this information either for its own use or at the request of any third party in connection with this application.

Signature:	Date:
Print Name:	
Signature:	Date:
Print Name:	