

Municipality of Chatham-Kent
Finance, Budget & Information Technology Services
Financial Services

To: Mayor and Members of Council
From: Steven Brown, CPA, CMA
Director, Financial Services
Date: January 27, 2019
Subject: Disposition of Land By-law

Recommendations

It is recommended that:

1. By-law 84-2017, with respect to the disposition of land, be repealed.
2. A new By-law for the disposition of land, as attached, be passed.
3. Administration amend current guidelines and procedures to reflect the policies within this By-law.

Background

The current By-law (84-2017) came into effect on June 5, 2017.

The General Procedure steps under the current By-law for land zoned as Residential, Commercial, Institutional or Open Space include:

1. Decision to dispose of the land;
2. Exclusive notice of disposal to certain Entities;
3. Notice of disposal to the Public;
4. Acceptable methods of sale for the disposal of land.

Additionally, there are Special Procedures under the current By-law to provide for the disposal of land zoned as Industrial with a focus on job creation, economic growth and community development.

Comments

The proposed revised By-law incorporates changes into a few areas of the disposition of land process to create a more efficient and cost effective process, while also obtaining the best value for municipal assets.

During the decision to dispose of land in Section 4(b) of the current By-law, the Manager responsible for the disposition of property is required to obtain an appraisal for all disposed lands, unless the land was vested into the name of the Corporation by way of a failed tax sale or if the property has an assessed value of less than \$25,000. The proposed By-law includes an increase on when the appraisal is required such that an appraisal is not required if the property has an assessed value of less than \$40,000.

The current and proposed By-laws include a provision under Section 7(b) to notify Habitat for Humanity of Chatham-Kent and other non-profit low income housing project providers who have requested to receive notice of the disposal of residential type lands, as directed by Council.

The proposed By-law increases the Chief Administrative Officer's authority to accept, reject, or make any counter offer on any term where the assessed value of the Land is below \$40,000 and the offer for land is below \$20,000.

All offers received for Land with an assessed value above \$40,000 or where the purchase price offered exceeds \$20,000, will be considered by the Chief Administrative Officer and he or she shall make recommendations to the Council to accept, reject, or make a counter offer.

Section 16 of the proposed By-law provides the Chief Administrative Officer the authority to accept, reject or make any counter offer where the assessed value of the Land is below \$40,000 and the offer for the Land is below \$20,000. Offers for Land with an assessed value above \$40,000 or an offer price in excess of \$20,000 will be presented to Council with a recommendation to accept, reject, or make any counter offer. Where an offer is made by, or the agent, realtor, or legal counsel acting for the person making the offer is:

- I. a Councillor, member of a local board, or employee of the Corporation;
- II. a parent, child or spouse of: a Councillor, member of a local board, or employee of the Corporation; or
- III. a corporation owned by, or partnership including, a Councillor, member of a local board, employee of the Corporation or a Councillor, member of a local board, or employee's parent, child, or spouse;

the Chief Administrative Officer shall not approve the offer and the offer shall be provided to Council for consideration through a Report to Council which discloses the relationship of the person making the offer or involved in the transaction as a realtor, agent, legal counsel or other such role and the Corporation.

There has been some discussion on the need for Road Closings to be presented in Closed Session based on the financial outcomes falling within the Chief Administrative Officer's limits. Road Closings require a reference plan with costs to be covered by the applicant(s) along with the passing of a By-law to close the road. Based on the applicant(s) covering all costs associated with the road closing process, and Open Session Council being one of the last steps in the Road Closing procedure, Council

should continue to provide direction to administration in Closed Session prior to a reference plan being created.

Areas of Strategic Focus and Critical Success Factors

The recommendations in this report support the following areas of strategic focus:

- Economic Prosperity:
Chatham-Kent is an innovative and thriving community with a diversified economy
- A Healthy and Safe Community:
Chatham-Kent is a healthy and safe community with sustainable population growth
- People and Culture:
Chatham-Kent is recognized as a culturally vibrant, dynamic, and creative community
- Environmental Sustainability:
Chatham-Kent is a community that is environmentally sustainable and promotes stewardship of our natural resources

The recommendations in this report support the following critical success factors:

- Financial Sustainability:
The Corporation of the Municipality of Chatham-Kent is financially sustainable
- Open, Transparent and Effective Governance:
The Corporation of the Municipality of Chatham-Kent is open, transparent and effectively governed with efficient and bold, visionary leadership
- Has the potential to support all areas of strategic focus & critical success factors
- Neutral issues (does not support negatively or positively)

Consultation

Legal Services was consulted in the development of the proposed By-law.

Financial Implications

The recommendations of this report will allow for cost savings in terms of appraisals of property. The expense of the appraisal of land will only be incurred where it is reasonably assured that the sale price of the land will provide for full recovery of the appraisal expense.

Prepared by:

Reviewed by:

Steve Brown, CPA, CMA
Director, Financial Services

Mike Turner, CPA, CMA
Chief Financial Officer, Treasurer

Consulted and confirmed the content of the consultation section of the report by:

David Taylor
Manager, Legal Services

Attachment: Property Disposition By-law

C: Manager, Legal Services

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OF THE CORPORATION OF THE MUNICIPALITY OF
CHATHAM-KENT

A by-law to establish policies with respect to the sale and other
disposition of real property.

FINALLY PASSED the day of , 2019

Section 9 of the *Municipal Act, 2001*, S.O. 2001, ch. 25, 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 this or any other Act;

Section 270(1) of the *Municipal Act, 2001*, S.O. 2001, ch. 25, as amended, requires that a municipality adopt and maintain policies with respect to the sale and other disposition of land;

Now therefore the Municipal Council of the Corporation of the Municipality of Chatham-Kent enacts the following with respect to the sale and other disposition of land.

Repealing Prior By-Laws

1. By-law number 84-2017, “A By-law to establish policies for the disposition of real property”, and all of its amendments thereto are hereby repealed.

Definitions and Interpretation

2. Headings are inserted for ease of reference only and are not to be used for interpretation aids.
3. In this by-law:
 - a. “Applicant” means a person requesting the closing and/or conveying of a road, highway or road allowance;
 - b. “Appraisal” means an independent written fair market valuation of the land that is satisfactory to the Manager;
 - c. “Corporation” means The Corporation of the Municipality of Chatham-Kent;
 - d. “Council” means the mayor and councillors of the Corporation;
 - e. “Disposition”, “disposal” and “dispose” mean the sale, transfer, conveyance or exchange of the fee-simple interest in land or the granting of a lease for a term of twenty-one (21) years or longer, but does not include the granting of an easement or right of way;
 - f. “EMT” means persons assigned by the Chief Administrative Officer to be members of the Executive Management Team of the Corporation, regardless of titles of such persons, as amended from time to time;
 - g. “Land” means real property owned by the Corporation;
 - h. “Licensed Realtor” means a realtor licensed and in good standing with the Real Estate Council of Ontario and who normally conducts business in Chatham-Kent;
 - i. “Manager” means the person within the administration of the Corporation that has been assigned responsibility for managing property disposition, regardless of his or her title as amended from time to time;
 - j. “Municipal Roads” refers to alleys, highways, streets, and laneways owned by the Municipality of Chatham-Kent;
 - k. “SMT” means persons assigned by the Chief Administrative Officer to be members of the Senior Management Team of the Corporation, regardless of titles of such persons, as amended from time to time; and
 - l. “T.A.C.” means the Technical Advisory Committee and includes

persons assigned by the Chief Administrative Officer to be members of the Technical Advisory Committee, regardless of titles of such persons, as amended from time to time.

Decision to Dispose of Land

4. The Corporation shall decide to Dispose of Land as follows:
 - a. The Manager shall prepare a list of Land to be Disposed;
 - b. The Manager shall obtain an Appraisal of the Land, either before or after Council or the Chief Administrative Officer has decided to Dispose of the Land. However, any property that has been vested into the Corporation's name by means of a failed tax sale or any property that has an assessed value of less than \$40,000, will not require an Appraisal;
 - c. The Manager shall circulate by email the list of Land to be Disposed to T.A.C. and SMT for the purpose of obtaining comments about whether the Corporation should Dispose of the Land;
 - d. The Manager shall sign and submit to the Chief Administrative Officer or EMT, either by email or at a meeting of EMT, any purchase and sale agreements from an interested party or a list of Land to be Disposed, and appraisals and comments obtained from T.A.C. and SMT;
 - e. The standard condition statements developed by Legal Services must be included in all purchase and sale agreements unless waived by Council as per section 4g.
 - f. The Chief Administrative Officer or EMT may make a recommendation to Council to Dispose of the Land with or without conditions, including but not limited to, a certain minimum price or intended use by the purchaser; and
 - g. The Council may declare Land available for Disposal, with or without conditions, including but not limited to a minimum price or intended use by the purchaser.
5. The Council may waive any of the requirements of section 4.
6. After Land has been declared available for Disposal, Council may declare Land no longer available for Disposal.

Exclusive Notice and Disposal to Certain Parties

7. After Land has been declared available for Disposal, the Manager shall circulate a list of the Land available for Disposal:
 - a. For all properties having a value of over \$25,000, as estimated by the Manager, by email or written notice, to the following parties:
 - Crown in Right of Ontario;
 - Crown in Right of Canada;
 - Lower Thames Valley Conservation Authority;
 - St. Clair College – Chatham Campus;
 - University of Guelph – Ridgetown Campus;
 - Lambton Kent District School Board;
 - St. Clair Catholic District School Board;
 - Hospital boards operating within the Municipality of Chatham-Kent;
 - All commissions and boards of the Corporation;
 - All corporations owned wholly or partly by the Corporation in which the Corporation owns at least fifty percent of the common or controlling shares of the corporation; and
 - Any other public entity deemed appropriate by the Manager.
 - b. For all vacant residential properties of any value, by email or written notice to Habitat for Humanity Chatham-Kent, and other non-profit low income housing project providers that request to receive notice.

8. If within (30) days a party given notice pursuant to section 7 declares an interest to purchase the Land in writing to the Manager, the Land shall be Disposed as follows:
 - a. Where the assessed value of the Land exceeds \$40,000 or the purchase price offered for the Land exceeds \$20,000, the Chief Administrative Officer or EMT shall consider any reasonable offer and shall make recommendations to the Council to accept, reject or make any counter offer and the Council may, on its own initiative or on the recommendation of the Chief Administrative Officer or EMT, agree to Dispose of the Land on any terms; or
 - b. Where the assessed value of the Land is below \$40,000 and the purchase price offered for the Land is below \$20,000, the Chief Administrative Officer shall consider any reasonable offer and whether to accept, reject or make any counter offer and may, on his or her own initiative or on the recommendation of EMT, agree to Dispose of the Land on any terms.

9. The Council may waive any of the requirements of section 7 or 8.

Notice to the Public

10. If after thirty (30) days no party given notice pursuant to section 7 (unless waived) has declared an intention to purchase the Land, the Manager shall give notice to the public of the Land available for Disposal pursuant to section 11.

11. Notice to the public shall include at least three of the following four methods:
 - a. Publication for at least one week in a local newspaper;
 - b. Publication for at least one week on the Corporation's website on a page dedicated for this purpose;
 - c. Posting a "For Sale" or "For Lease" sign on the land for at least one week;
 - d. Publication for at least one week on the websites Realty.ca, MLS.ca or other professional realty website.

12. The Council may waive the requirements of section 11.

Disposal of Land

13. The Manager shall utilize one or more of the following methods of sale:
 - a. Public auction,
 - b. Tender process,
 - c. Direct negotiation,
 - d. Listing with a licensed realtor.

14. Where the Manager chooses or is directed to list with a Licensed Realtor, the Manager will list the land for sale with a Licensed Realtor, determined through a competitive process for purchasing services in accordance with the Corporation's purchasing by-laws.

15. Where a real estate agent not under contract with the Corporation brings forward a client interested in purchasing industrial Lands, such real estate agent may receive the same financial commission percentage, at the discretion of the Director of Economic Development, as the real estate agent

under contract with the Corporation at time of closing.

16. Where the Manager receives a reasonable offer, it shall be presented to the Chief Administrative Officer or EMT and the following shall apply based on the assessed value of the Land:

- a. Where the assessed value of the Land exceeds \$40,000 or the purchase price offered for the Land exceeds \$20,000, the Chief Administrative Officer or EMT shall consider the offer and shall make recommendations to the Council to accept, reject or make any counter offer; or
- b. Where the assessed value of the Land is below \$40,000 and the purchase price offered for the Land is below \$20,000, the Chief Administrative Officer shall consider the offer and whether to accept, reject or make any counter offer. Notwithstanding this authority of the Chief Administrative Officer, where an offer is made by, or the agent, realtor, or legal counsel acting for the person making the offer is:
 - i. a Councillor, member of a local board, or employee of the Corporation;
 - ii. a parent, child or spouse of: a Councillor, member of a local board, or employee of the Corporation; or
 - iii. a corporation owned by, or partnership including, a Councillor, member of a local board, employee of the Corporation or a Councillor, member of a local board, or employee's parent, child, or spouse;

such an offer shall not be approved by the Chief Administrative Officer and shall be provided to Council for consideration through a Report to Council which discloses the relationship of the person making the offer and the corporation.

17. The Council or Chief Administrative Officer may agree to Dispose of Land on any terms.

Exempt Classes of Land

18. The following classes of Land are exempt from the requirements of sections 4 to 17 inclusive:

- a. All Land that is zoned for industrial uses;
- b. All cemetery plots;
- c. Any Land transferred to the Corporation for security or for temporary roads or other works in connection with any agreement to which the Corporation is a party under the Planning Act, R.S.O. 1990, c. P. 13, as amended.
- d. Land 0.3 meters 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;
- e. Land being repurchased by an owner in accordance with Section 42 of the Expropriations Act, R.S.O. 1990, c. E. 26, as amended.

19. All classes of Land listed in section 18, except Land that is zoned for industrial uses, shall be Disposed by the Corporation on any terms as approved by the Chief Administrative Officer or Council.

Road Closing Procedure

20. Where an Applicant requests that the Corporation close and convey a

Municipal Road, such request must include payment of all costs associated with title search and other administrative costs related to the request. Such amounts shall be determined by the Manager and conveyed to the Applicant. Following the initial request, the following process shall apply:

- a. The Applicant will be responsible for reimbursing the Corporation for all expenses incurred during the Municipal Road closing and conveying process;
- b. If more than one party requests a portion of the Municipal Road being declared as surplus, all expenses are to be shared proportionately by all parties;
- c. Once the title search has been completed to confirm the Corporation as the rightful owner, the application is forwarded to T.A.C. for review and comments;
- d. The application is also to be forwarded for review by:
 - i. Emergency Services
 - ii. Entegrus
 - iii. Cable TV (if applicable)
 - iv. Union Gas
 - v. Bell Telephone
 - vi. Hydro One

Should any of these parties raise concerns, the Manager shall attempt to resolve these or consider if the Municipal Road should not be closed and conveyed;

- e. The Manager shall negotiate with the Applicant to determine the purchase price for the Municipal Road. If the value of the Municipal Road cannot be agreed to, the application will be rejected. The Manager may seek an Appraisal if necessary;
- f. Where a price has been agreed to, the Manager shall bring a report to a Closed Session of Council for direction;
- g. Where Council directs administration to proceed with the sale, a Reference Plan of the Municipal Road providing the appropriate property description will be prepared, if necessary;
- h. An advertisement shall be placed in either a print or online newspaper having general circulation or coverage in the area of the Municipal Road, notifying the public of the Corporation's intention to close and sell the Municipal Road. The advertisement must provide that any person who claims that his/her land might be prejudicially affected by the selling of this Municipal Road will be heard in person or by his/her counsel at a Council meeting where the by-law will be considered;
- i. If no one appears before Council with an objection and Council has no objections to the closure, the By-Law will be approved;
- j. Should an objection be received, Council will provide Administration with direction on how to proceed with the application;
- k. Where the closing and conveying of a Municipal Road has been approved by Council, Legal Services shall take all steps necessary to register the necessary by-law on title and convey the Municipal Road to the Applicant;

Industrial Uses Lands

21. All Land that is zoned for industrial uses shall be sold for the purposes of creating jobs, developing economic health and growing the property tax base.

22. All Land that is zoned for industrial uses shall be priced and marketed as follows:

- a. The Manager shall maintain an inventory of Land zoned for industrial uses;

- b. The Council, with a recommendation from the Chief Administrative Officer or EMT, shall annually set the price per acre at a meeting open to the public;
- c. The price per acre shall be set by the Council annually, with consideration given to the following criteria such as:
 - i. Location;
 - ii. Type and quality of land;
 - iii. Level and type of servicing to the land;
 - iv. The underlying value of undeveloped agricultural or farm land;
 - v. Proximity to transportation services;
 - vi. The potential and need for job creation in the area;
 - vii. Economic development;
 - viii. Potential for increase of the property tax base;
 - ix. Value of industrial land in nearby municipalities.
- d. The inventory and price per acre shall be published on the Corporation's website on a dedicated webpage for the sale of Land zoned for industrial uses;
- e. The Corporation may at any time decide not to sell Land, even after a written offer to purchase is received;
- f. Notwithstanding the annual price per acre set by the Council, the Council may at its sole discretion decide to sell Land at a price different from the set price, based on the following criteria:
 - i. The commencement date of any construction by the buyer;
 - ii. The intended use of the land;
 - iii. The number and type of jobs that will be created or transferred;
 - iv. The growth of the underlying property tax base; and
 - v. The potential for any other economic development, direct or indirect.

23. The conditions for Disposition of Land for sale that is zoned for industrial uses, shall include:

- a. Sale of Land on an "as is, where as" basis;
- b. The purchaser to complete and execute an offer to purchase in the form provided by the Corporation, accompanied by a deposit payable to the Corporation by cash or certified cheque equal to 10 percent of the total purchase price, and the balance shall be payable subject to usual adjustments upon completion of the transaction;
- c. The purchaser to obtain all permits, licenses and permissions for construction and/or use of the lands;
- d. The purchaser shall commence construction, renovation, enlargement, extension, or other construction, as the case may be, within one year of the registration of the deed or transfer and shall diligently complete construction or renovation of the building or structure, in default of which the purchaser shall in the sole discretion of the Corporation re-convey the land to the Corporation at the original purchase price, free and clear of all encumbrances, easements, and restrictions or covenants except those originally assumed by the purchaser from the Corporation;
- e. The minimum coverage of the land by an intended or existing building or structure shall be 15 percent, except where the maximum coverage under the applicable zoning by-law is less than 15 percent;
- f. The purchaser shall not within 10 years of the registration of the deed or transfer convey any part of the land by deed, transfer, grant, assignment, appointment, mortgage, charge, lease or sub-lease without first notifying the Corporation and, where it has been notified, the Corporation may in its sole discretion either grant its consent or require the purchaser to re-convey the land to the Corporation free and clear of all encumbrances, easements, restrictions or covenants except those originally assumed by the purchaser from the Corporation;

- g. The purchaser shall pay local improvement charges and any other special levies assessed at any time against the land on and after completion of the purchase;
- h. The cost of service connections from the main to the property line is the responsibility of the purchaser;
- i. The purchaser accepts the current condition of the site and the cost of removal of topsoil from the site if required; and
- j. The transaction shall be completed within 90 days of the passing of the by-law accepting the offer to purchase or within such period as may be agreed between the Municipal Solicitor and the purchaser's solicitor.

24. Notwithstanding sections 21, 22 and 23, the Municipal Council may agree to Dispose of Land that is zoned for industrial uses on any terms.

This By-law shall come into full force and effect upon the final passing thereof.

READ A FIRST, SECOND AND THIRD TIME this day of , 2019.

ORIGINAL SIGNED BY:

MAYOR – Darrin Canniff

ORIGINAL SIGNED BY:

CLERK – Judy Smith