

By-Law Number 20-042

of

The Regional Municipality of Waterloo

A By-law to Define The Policy And Procedures Governing The Sale And Other
Disposition Of Land By The Regional Municipality Of Waterloo

Whereas subsection 270(1) of the Municipal Act, 2001, S.O. 2001, as amended, provides that a municipality shall adopt and maintain policies with respect to its sale and other disposition of land;

Whereas the Council of the Regional Municipality of Waterloo deems it desirable to establish a new by-law for the sale and other disposition of land owned by the Regional Municipality of Waterloo; and

Whereas the Council of the Regional Municipality of Waterloo is committed to the fair, open, transparent and fiscally responsible management of land;

Now therefore the Council of the Regional Municipality of Waterloo enacts as follows:

Definitions

1. In this By-law:

“Appraisal” means a current Market Value appraisal or valuation prepared by qualified staff of the Region or an independent qualified property appraisal professional in accordance with current industry/professional standards/practices or as prescribed and approved by the manager;

“Bi- lateral Monopoly” means a proposed disposal of Land where there is only one possible purchaser and one possible vendor and which is characterized by the absence of competition;

“Commissioner” means the Region’s Commissioner of Corporate Services, his or her designate, or its successor position thereto;

“Easement” means a limited interest in Land owned by another that entitles the holder of the Easement to a specific limited use or enjoyment (such as the right to cross the land). An Easement is considered to be a Temporary easement if the Easement rights conveyed may endure for less than twenty- one years.

“Land” means a parcel or parcels of real property and all buildings and structures constructed thereon, or interests in real property, or moveable buildings, presently owned by the Regional Municipality of Waterloo;

“Local Municipality” means any one of the municipalities of the City of Cambridge, City of Kitchener, City of Waterloo, Township of North Dumfries, Township of Wellesley, Township of Wilmot and the Township of Woolwich;

“Manager” means the Manager of Real Estate Services, his or her designate, or any successor position thereto;

“Market Value” means the highest price a willing buyer would pay and a willing

seller accept for land, where both parties are fully informed;

“Open Session” means a meeting of a Committee of Regional Council or a meeting of Regional Council which is open to the public;

“Region” means the Regional Municipality of Waterloo;

“Regional Council” means the Council of the Regional Municipality of Waterloo;

“Sale” means any disposition of an interest in land and includes a lease of 21 years or longer and a transfer or release of easement, but does not include leases of less than 21 years, licenses, encroachments or temporary easements;

“Stand-Alone Parcel” means a parcel of land with a building(s) situate thereon or, a parcel of land for which a building permit could be acquired based on its existing configuration; and

“Utilities” means a public utility, municipal electricity company or a telephone company, providing services in the area.

Conditions For A Sale of Land

2. Unless otherwise stated in the By-law, before a Sale of any Land:

- (a) The Land shall be declared surplus to the needs of the Region;
- (b) At least one (1) Appraisal of the Land shall be prepared or obtained; and
- (c) Notice of the proposed declaration of surplus property shall be given to the public.

Certain Classes of Land Deemed Surplus

3. For the purposes of Section 2(a), the following classes of Land are hereby declared to be surplus to the needs of the Region:

- (a) Land acquired as a reserve or a widening in connection with a public highway if conveyed to the abutting road authority, effective upon fulfillment of the purpose for which it was acquired, as certified by the Region’s Commissioner of Transportation and Environmental Services;
- (b) Land repurchased by an owner in accordance with Section 41 or 42 of the Expropriations Act, R.S.O. 1990, c. E.26, as amended;
- (c) Land or Easement acquired in connection with an approval or decision under the Planning Act, R.S.O. 1990, c. p.13, as amended, that is not, or is no longer, necessary for the Region’s purposes, as certified by the Region’s Commissioner responsible for the project or programme in respect of which the subject Land or Easement was acquired, and intended to be re-conveyed to the person who originally conveyed it or their successor in title;
- (d) Release of Easements that are not, or are no longer, necessary for the Region’s purposes, as certified by the Region’s Commissioner responsible for the project or programme in respect of which the subject Easement was acquired, and intended to be conveyed to the person who originally conveyed it or their successor in title;
- (e) Land or Easements to be conveyed pursuant to settlement agreements reached under the Expropriations Act, R.S.O. 1990,

- c. E.26, as amended, or other litigation settlements approved by Regional Council;
- (f) Land or Easements granted to any Local Municipality, government authority, Utilities or similar entities providing services in the area, required to provide services to Regional lands and facilities;
- (g) Land at the Region of Waterloo International Airport leased for a term 21 years or greater pursuant to a lease agreement approved by Regional Council; and
- (h) Land to be conveyed for economic development purposes pursuant to an agreement approved by Regional Council.

The Commissioner and the Regional Solicitor are authorized to approve the Sale of the Land described in Subsections (a) to (d) inclusive and (f) above provided that the estimated Market Value is \$100,000 or less.

Authority to Declare Surplus

4. Subject to Section 3 of this By-law, the Commissioner responsible for the project or programme in respect of which Land was acquired and the Regional Solicitor are authorized to declare surplus to the needs of the Region Land with an estimated Market Value of \$100,000 or less, as determined by an Appraisal, that is no longer required for the Region's purposes and that is not capable of being developed as a Stand-Alone Parcel, and to approve the intended manner or process by which the Sale of the Land will be carried out.
5. Subject to Section 3 of this By-law, before selling any Land with an estimated Market Value greater than \$100,000, as determined by an Appraisal, or any Land with an estimated Market Value of \$100,000 or less that is capable of being developed as a Stand-Alone Parcel, Regional Council shall declare the Land surplus, and approve the intended manner or process by which the Sale of Land will be carried out.
6. A periodic summary report of all activities approved under the delegated authority in Section 4 of the By-law will be made by the Manager to Regional Council for information purposes.

Appraisals

7. Where the estimated Market Value, as determined by the Manager, is less than \$100,000 the Appraisal may be by way of a summary appraisal of value or other short-form written report, in accordance with current industry/professional standards/practices or as prescribed and approved by the Region's Manager of Real Estate Services prepared by either an independent property appraisal professional or qualified Regional staff.
8. Where the estimated Market Value, as determined by the Manager, is greater than \$100,000 a written Appraisal shall be prepared by an independent property appraisal professional in accordance with current industry/professional standards/practices or as prescribed and approved by the Manager.

Circulation Procedures

9. Subject to Section 3 of this By-law, prior to the declaration of surplus Land pursuant to Section 4 or 5 of this By-law, the Manager shall notify

departments of the Region, any Local Municipality and Utilities as appropriate, regarding potential surplus Land as set out in this By-law.

10. Circulation to departments of the Region shall include information:

- (a) identifying the Land;
- (b) indicating that the Land may be declared surplus and sold; and
- (c) requesting expressions of interest in the Land within a reasonable period of time, as determined by the Manager.

11. If a department of the Region expresses an interest in the Land circulated under Section 10 of this By-law, the Land shall be retained, subject to direction from Regional Council.

12. If no department of the Region expresses an interest in the Land within a reasonable period of time as determined by the Manager, the Manager shall circulate to such Local Municipality and Utilities in which the Land is located, as deemed appropriate by the Manager, information identifying the Land that may be declared surplus and sold, and request identification of any existing infrastructure interest in the Land within three (3) weeks.

13. The Local Municipality and Utilities shall have three (3) weeks in which to notify the Manager of any existing infrastructure interest in the Land.

14. The Manager, in consultation with the the Commissioner responsible for the project or programme in respect of which Land was acquired and the Regional Solicitor, may determine that the circulation procedure for departments of the Region, or any Local Municipality and Utilities not be undertaken if no significant purpose would be served thereby, or, be undertaken concurrently, and may make such adjustments to the notification process as deemed necessary.

15. A Local Municipality or Utilities which have an identified existing infrastructure interest in the Land shall have two (2) months to negotiate and complete the acquisition of a registered easement or other interest in the Land.

Price

16. Sales of surplus Land shall be at Market Value, unless otherwise set out in this By-law or unless otherwise directed and approved by Regional Council.

17. The following types of Land may be sold at less than Market Value:

- a. The classes of Land described in Section 3(a) to (f) inclusive;
- b. Land originally acquired for nominal consideration proposed to be conveyed to the person who originally conveyed it or their successor in title; and
- c. a Bi-lateral Monopoly, where the Land has an estimated Market Value less than \$100,000, as determined by an Appraisal.

Methods of Sale

18. Subject to Section 3, where land is declared to be surplus pursuant to Section 4 or 5, the determination of the most appropriate method of Sale of surplus Land may include:

- (a) public tender, where the Land is offered in accordance with established tendering policies of the Region;
- (b) direct Sale to a specific party, where the Manager determines there is only one possible purchaser (Bi-lateral Monopoly), or the Sale is to an abutting owner where the Land is not a Stand-Alone Parcel, or is landlocked;
- (c) Land exchange, where the Land is to be exchanged for lands of the same or higher value or lands of lesser value and other consideration, is deemed suitable or necessary for the Region by the Manager, or as otherwise approved by Regional Council;
- (d) Real estate Multiple Listing Service where land is listed with a local real estate board or broker; or
- (e) any other mechanism deemed appropriate by Regional Council.

Easements

19. Where easements with a Market Value less than \$100,000, as determined by an Appraisal, are conveyed over Land, the Manager, in consultation with the Commissioner and the Regional Solicitor, is authorized to approve the intended manner or process by which a transfer of easement interest will be carried out.

Notice

20. Notice of a proposed declaration of surplus Land that is a Stand-Alone Parcel shall be by notice in a newspaper that is of sufficiently general circulation in the area where the Land is located and posting of notice on the Region's Public Notice webpage and email subscriber service, a minimum of 21 days in advance of the Region's Committee meetings or Council meeting at which the proposed Sale is to be considered.

21. Subject to Section 20 and 22, notice of a proposed declaration of surplus Land shall be by inclusion of the report pertaining to such Land on the agenda of the Region's Committee meetings or Council meeting at which the report is to be considered.

22. The classes of Land described in Section 3 and Section 4 are exempt from any requirement to give notice.

Agreement of Purchase and Sale

23. All agreements and ancillary documentation necessary to conclude the Sale of Land or Easement with an estimated Market Value is \$100,000 or less declared surplus pursuant to Sections 3 and 4 of this By-law, shall be to the satisfaction of and executed by the Commissioner and the Regional Solicitor.

24. All agreements for the Sale of Land or Easement with an estimated Market Value of \$100,000 or greater declared surplus pursuant to Sections 3 and 5 of this By-law, shall be to the satisfaction of Regional Council.

Report to Council

25. A periodic summary report of all activities approved under Sections 3, 4 and 17 of the By-law will be made by the Manager to Regional Council for information purposes.

Certificate

26. The Clerk of the Region may issue a certificate with respect to a Sale of Land by the Region verifying that, to the best of his or her knowledge, the requirements of this By-law which apply to the Sale of Land, have been complied with.
27. The Manager shall provide to the Clerk with sufficient information to permit the Clerk to issue a certificate.
28. A certificate issued by the Clerk under Section 26 of this By-law shall be deemed to be sufficient proof that the provisions of this By-law have been complied with.

Finance

29. All Land financed, purchased, donated or otherwise acquired by the Region shall be administered by the Corporate Services Department. Upon land no longer being utilized for the purpose for which it was acquired, the Land will be declared surplus, sold, or otherwise utilized by the Region.
30. Subsequent to the closing date net proceeds shall be credited to the designated capital reserve account.
31. Transactions arising from the Sale of surplus land shall be recorded in accordance with the requirements of *Public Sector Accounting Handbook Section 3150 Tangible Capital Assets*.

Cost Recovery and Deposit

32. Where the Region is approached first by an external potential purchaser offering to purchase surplus Land, all reasonable fees, costs and expenses incurred by the Region for the Sale of the Land, even if the Land is sold at nominal value, may be recovered from the purchaser on or before the closing date.
33. The costs of obtaining a legal survey or preparing and registering a plan for the purposes of legally describing the surplus Land, shall be borne by the purchaser, unless otherwise approved by the Manager.
34. At the time of signing an Agreement of Purchase and Sale, or at any earlier point at the discretion of the Manager, external potential purchasers shall provide a deposit sufficient to cover any fees, costs and expenses the Region will incur and for which the purchaser is responsible pursuant to the By-law. The deposit shall not be refunded if the purchaser does not complete the transaction for any reason other than one which is permitted in the Agreement of Purchase and Sale.

Sale of Land to Employees or Elected Officials

35. The Sale of all surplus Land shall require a written confirmation from the potential purchaser, to be included with the Agreement of Purchase and Sale before it is accepted by the Region, advising whether the purchaser is, or is not, an employee or elected official of the Region, or a family member of either, and whether any person having a controlling interest in an organization acquiring surplus Land is an employee or elected official of the Region or a family member of either, and

declaring that there is no conflict of interest arising from this proposed purchase.

36. A sale of surplus Land to an employee or elected official of the Region, or to a family member of either, or to an organization where a person having a controlling interest in such organization is an employee or elected official or family member of either:
- (a) must comply with the requirements of all by-laws, policies and procedures of the Region regarding conflict of interest;
 - (b) requires the prior approval of the Chief Administrative Officer of the Region; and
 - (c) requires approval of Regional Council, after consideration of an Open Session report.

Regional Council Discretion

37. Nothing in this By-law, including all delegations of authority included herein, shall fetter the absolute discretion of Regional Council to retain any Land or to dispose of Land on such terms and conditions as may be determined by Regional Council, which shall include the power to sell or lease the Land for nominal consideration to whomever it wishes.

General

38. The procedures set out in this By-law do not apply to the sale or disposition of Land in accordance with an agreement for the provision of municipal capital facilities entered into pursuant to subsection 110 of the Municipal Act, 2001, S.O. 2001, as amended.
39. The Commissioner and the Regional Solicitor shall be responsible for developing and implementing forms and procedures for the administration of this By-law by Region staff.
40. In the event one of the Region's Commissioners is temporarily absent for any reason, the Commissioner may designate in writing a Regional Director in such Commissioner's Department to hold the Commissioner's position in an acting capacity and such Director is authorized to exercise the approval and signing authority delegated to such Commissioner under this By-law during the time period that such person is so designated and for the authority described in such designation.
41. In the event the Regional Solicitor is temporarily absent for any reason, the Regional Solicitor may designate in writing any other solicitor employed by the Region as the Acting Regional Solicitor and the Acting Regional Solicitor shall have all of the authority to exercise the approval and signing authority delegate to the Regional Solicitor under this By-law during the time period that such solicitor is so designated and for the authority described in such designation.
42. Despite anything in the By-law, the Commissioner or Regional Solicitor may refer any specific proposed disposition to Regional Council through the appropriate Standing Committee for direction, approval, resolution or information at any time and any decision, direction or action of Regional Council in respect of such matter shall supersede

and replace the authority delegated under this By-law in respect of such specific matter.

43. This By-law shall replace By-law 95-034 and the Regional Property Disposition Policy approved by Confirmatory By-law 95-030 and said By-law 95-034 and the portion of said Confirmatory By-law to the extent that it approved said Policy are hereby repealed as of the date that this By-law comes into force and effect, and the balance of said Confirmatory By-law remains in force and effect.

44. If any section or part of this By-law is found by any court of competent jurisdiction to be illegal or beyond the power of Regional Council to enact, such section or part shall be deemed to be severable and all other sections or parts of the By-law shall be deemed to be separate and independent therefrom and to be enacted as such.

45. The short title of this By-law shall be "Disposal of Land By-law".

46. This By-law shall come into force on the date it is enacted.

By-law read a first, second and third time and finally passed in the Council Chamber in the Regional Municipality of Waterloo this 20th day of August, A.D., 2020.



Regional Clerk



Regional Chair