

Policy Title: Land Divestiture Policy

Date adopted by Council: December 13, 2022



1. POLICY STATEMENT

To encourage community growth and contribute to the social and economic development of the Town of Lunenburg, the Town will divest of surplus land in an open and transparent process and ensure that the consideration for such disposal is fair, reasonable, and in the best interest of the Town.

2. PURPOSE

This policy is intended to serve as guidance for the Town of Lunenburg when proposing to divest of surplus land that is no longer needed for the purposes of the Town, and to ensure an open and transparent process.

3. SCOPE

This policy and procedures apply to the divestiture of surplus land owned by the Town of Lunenburg.

4. DEFINITIONS

“Appraisal” means an opinion on the fair market value of the surplus land provided by an Accredited Land Appraiser or such other qualified person as the CAO deems suitable.

“CAO” means the Chief Administrative Officer of the Town of Lunenburg.

“Development” means any erection, construction, alteration, replacement, or relocation of or any addition to any structure and/or any change or alteration in the use made of land, buildings, or structures.

“Divestiture” means the sale, exchange, or transfer of any portion of the Town’s surplus land.

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

“Immediate Family Member” means any spouse of a Council member or employee of the Town, and any son, daughter, mother, father, brother or sister of a Council member or employee and those of the Council members’ or employee’s spouse; or any other person who normally resides in the same home as a Council member or employee of the Town.

“Land” means lands owned by the Town, whether vacant or not, or any other proprietary interests in lands owned by the Town, and, without limiting the generality of the foregoing, includes easements, rights-of-way, leaseholds, and includes any interest in lands under an agreement of purchase of sale.

“Lot” means any existing lot and includes any lot to be created by the filing of a Plan of Subdivision.

“Subdivision” means the division of any area of land into two or more parcels and includes a re-subdivision or a consolidation of two or more parcels.

“Surplus Land” means any land declared surplus by the Town that is no longer required for Town purposes.

“Town” means the Town of Lunenburg.

5. AUTHORITY, LEGISLATION, AND REGULATIONS

In declaring surplus property for divestiture, the Town shall comply with the Municipal Government Act (MGA) with particular attention to Sections 50, 51, 51A, and 218.

6. RESPONSIBILITIES

4.1 Council

Council declares the land surplus and declares that the lands are no longer required for Town purposes.

4.2 CAO

The CAO may:

- Negotiate and include additional items not in conflict with any specific provisions of this Policy in consideration of the best interest of the Town. The CAO may seek legal advice in the drafting of the terms and conditions of the Purchase and Sale Agreement and/or the Real Estate Broker Agreement.
- Consider a variance in price in the Purchase in Sale Agreement, in accordance with the MGA.
- Obtain the services of a legal firm to execute the divestiture of Town lands.
- Approve and/or amend the provisions and/or terms of a Purchase and Sale Agreement and/or the Real Estate Broker Agreement, in accordance with the MGA.

7. GENERAL

- 7.1 If any provisions of this Policy are inconsistent with the provision of the MGA, its' Regulations or any other Act, the provisions of the Act or Regulations will prevail.
- 7.2 This Policy will be consistent with the Town's objectives, by-laws and approved policies as well as all Provincial and Federal legislation governing the operation of the Town. Where there is a conflict, the higher or more stringent regulation or provision will prevail.
- 7.3 Any Council reports dealing with any divestiture of any Town lands, including the determination of the sale price and/or negotiations related thereto, shall be dealt with in-camera in accordance with Section 22(2)(a) of the MGA until such time as required to be dealt with at an open meeting of Council.
- 7.4 The Town may refuse any offer of purchase at its sole and absolute discretion.
- 7.5 Divesting of surplus land will be subject to any pre-existing benefits, burdens, and/or interests (including, but not limited to easements) of title.
- 7.6 To avoid conflict of interest the following persons are precluded from purchasing Town surplus property, except when said property directly abuts their existing property in-keeping with Section 51A of the MGA:
- a. A member of Town Council;
 - b. an employee of the Town;
 - c. an immediate family member; or
 - d. a company in which a person referred to in clause (a), (b), or (c) has an interest.

8. ADMINISTRATIVE PROCEDURES

8.1 Requests for Municipal Property

- 8.1.1 Council may consider the divesting of Town lands upon written request prepared by the prospective purchaser or their agent.
- 8.1.2 Council may deem properties surplus without a request if it is felt that the property is no longer required for Town purposes.

8.2 Determination of Surplus Land

- 8.2.1 Prior to divesting any lands, Council shall, by resolution, declare the land surplus and declare that the lands are no longer required for Town purposes.
- 8.2.2 Before declaring a property to be surplus, a report and recommendation shall be submitted for Council's consideration.

8.2.3 The evaluation criteria in Appendix A will be used to create a land profile and will form part of the report referred to in Section 8.2.2.

8.2.4 Prior to divesting any surplus land, the Town may wish to obtain or require:

- a. clear title and migration into the Land Registration Office;
- b. a legal survey plan;
- c. a subdivision plan, if required; and
- d. an appraisal for Fair Market Value.

8.3 Public Information Meeting (PIM)

8.3.1 Prior to divesting any surplus Residential Use (RL, RM, RH, RUR) Zone lands as defined under the Town's Land Use By-law, Council shall hold a Public Information Meeting (PIM) to advise the public and to seek public comments into the possible divestiture of Town land.

8.3.2 Prior to divesting any surplus lands not zoned as Residential Use (RL, RM, RH, RUR) Zone as defined under the Town's Land Use By-law the holding of a Public Information Meeting (PIM) to advise the public and to seek public comments into the possible divestiture of Town land shall be at the discretion of the CAO.

8.3.3 Notwithstanding Article 8.3.1 above, those lands intended for sale under Section 51A of the Municipal Government Act, "Sale to Abutting Owner", the holding of a Public Information Meeting (PIM) to advise the public and to seek public comments into the possible divestiture of Town land shall be at the discretion of the CAO.

8.3.4 Notwithstanding Article 8.3.1 above, those lands that are less than the area and/or frontage requirements of the Lot Zone as described on the Lot Zone Map of the Land Use By-law, the holding of a Public Information Meeting (PIM) to advise the public and to seek public comments into the possible divestiture of Town land shall be at the discretion of the CAO.

8.3.5 A notice of a Public Information Meeting pursuant to this Policy may be advertised solely through the Town's website and social media posts a minimum of five (5) clear days prior to the meeting. Such notice may also be published in the local paper a minimum of five (5) clear days prior to the meeting at the discretion of the CAO.

8.4 Purchase and Sale Agreement

8.4.1 The following conditions may be included in a purchase and sale agreement:

- a. Deposit:
 - i. A 10% deposit against the final purchase price within specified timeline of an accepted offer.

- ii. Any deposit shall be returned to the purchaser, without interest, if the Town fails to fulfil the Terms of the Purchase and Sale Agreement.
 - iii. Any deposit shall be forfeited should the purchaser fail to complete the sale in accordance with the Terms of the Purchase and Sale Agreement in addition to any other rights, costs or damages that the Town may otherwise be entitled to.
- b. Sale of the property shall be completed within specified timeline of an accepted offer.
- c. Construction Timelines:
- i. if construction of a development is relevant to the sale of the property, the Purchase and Sale Agreement may require that Commencement of Construction shall be not later than a specified timeline from the Date of Closing.
 - ii. If construction of a development is relevant to the sale of the property, the Purchase and Sale Agreement may require the Development to be completed no later than a specified timeline from the Date of Closing.

8.4.2 Purchase and Sale Agreements should, if applicable, include clear direction related to any buy-back provisions. If any buy-back provisions are incorporated within the Purchase and Sale Agreement, the Agreement shall layout the provisions to recoup any costs associated with returning the lot to its original pre-purchased condition.

8.5 Real Estate Broker

8.5.1 The CAO may decide, at their discretion, to use the services of a real estate broker.

8.5.2 The following conditions may be included in a real estate broker agreement:

- a. Commission:
 - i. the percentage of the real estate commission;
 - ii. the timeline when the real estate commission is payable to the broker within a specified timeline of closing.
- b. Municipal Liability:
 - i. a clause regarding, if for any reason, the transaction does not close, the Town is not responsible for the payment of the real estate commission nor is the Town liable for any other payments, penalty, action, or future consideration to the broker.

9. EXEMPTIONS

Properties that are up for sale due to tax arrears pursuant to Section 134 of the MGA are exempt from this Policy.

10.APPENDICES

- Appendix A: Land Profile Evaluation Tool

Policy Title: Land Divestiture Policy

Appendix: A – Land Profile Evaluation Tool



1. Specify the location and area of the land (i.e. civic address, PID #, survey)
2. Specify the monetary value of the land (assessed/appraised value).
3. What form of access is there to the property? (public road, private road, easement).
4. Does the property have any known contamination/environmental concerns based on previous environmental studies, if any, or does an environmental assessment need to be conducted?
5. Does the property have any architectural, historical, or recreational value? Does the Town's ownership have a role in preserving these values or are they protected by other means.
6. Does the property have any ecological/conservation value? Does the Town's ownership have a role in preserving these values or are they protected by other means.
7. Has fair Market Value for the land been determined?
8. Is the land adjacent or nearby water (river, lake, ocean)?
9. Is the land already in use? Is there a lease agreement in place?
10. Are there any known public concerns relating to the divestiture of the property?
11. Is there possible future liability/gain (i.e. useful site in future, or site features such as erosion that suggest any divestiture would result in a liability)?
12. Has an electrical scoping evaluation taken place?
13. Do stakeholders such as nearby landowners, community associations, and/or members of the public need to be consulted?
14. Consideration of the current and future carrying costs associated with not proceeding with the potential sale, including, but not limited to, cost of operation, maintenance and utilities.

TOWN OF LUNENBURG
Clerk's Annotation for Official Policy Book

Policy: Land Divestiture Policy

Date of Notice to Council: September 13, 2022

Date of Adoption: December 13, 2022

I certify that this Policy was adopted by Council as indicated above.



Municipal Clerk

Date: December 14, 2022