

THE CORPORATION OF THE TOWNSHIP OF MALAHIDE

BY-LAW NO. 11-35

Being a By-law to govern the sale of surplus land.

WHEREAS Section 270 (1) of the Municipal Act, S.O. 2001, c. 25 as amended from time to time authorizes every Township to establish and maintain policies governing the sale or other disposition of its land;

AND WHEREAS the Corporation of the Township of Malahide did, on the 6th day of December, 2007, enact By-law No. 07-72 (the "Existing By-law") to establish procedures for the sale of land owned by the Township;

AND WHEREAS the Council of The Corporation of the Township of Malahide deems it expedient to establish and adopt a policy with respect to the sale and disposition of land to comply with legislative requirements to replace the Existing By-law;

NOW THEREFORE the Council of The Corporation of the Township of Malahide **HEREBY ENACTS AS FOLLOWS:**

1. Title and Definitions

In this By-law, unless the context otherwise requires:

- (a) "Act" means the *Municipal Act, S.O. 2001, c. 25*, as amended from time to time;
- (b) "Appraisal" means a written opinion / letter of opinion by an individual with training and experience in valuing real property and the fixed improvements thereon, as the amount that the real property or any right, title or interest in the real property might be expected to realize if sold in the open market;
- (c) "Chief Administrative Officer/Clerk" means the Chief Administrative Officer/ Clerk of the Township;
- (d) "Council" means the Council of the Township;
- (e) "Land" means any right, title, interest or estate the Township has in real property and the fixed improvements situate thereon and appurtenances thereto including without limitation a leasehold interest or estate therein;

- (f) "Meeting" means any regular, special Committee or other meeting of the Council or one of the Committees of Council open to the public;
- (g) "Township" means The Corporation of the Township of Malahide;
- (h) "Newspaper" means a printed publication in sheet form intended for general circulation published regularly at intervals of not longer than a week consisting in great part of news of current events of general interest and sold to the public and to regular subscribers that in the opinion of the Chief Administrative Officer/Clerk has such circulation within the Township of Malahide as to provide reasonable notice to those affected by or interested in the subject land sale;
- (i) "Sale" means the sale or other disposal of Surplus Land by the Township under this By-law and includes a lease of 21 years or longer; and
- (j) "Surplus Land" means any Land declared surplus under Section 5.1 of this By-law.

2. Schedule 'A' and Schedule 'B'

- 2.1 Schedule 'A' entitled 'Procedures for the Sale of Surplus Land' forms a part of this By-law and contains the procedures in respect of the Sale of Surplus Land including, without limitation, the requirements with respect to obtaining an Appraisal and giving of notice to the public and methods of sale.
- 2.2 Schedule 'B' entitled 'Compliance Certificate' forms a part of this By-law and contains the form of certificate confirming compliance with the Act and this By-law to be issued by the Chief Administrative Officer/Clerk under Section 5.6 of this By-law.

3. Application

- 3.1 This By-law, including Schedule 'A', shall apply to all classes of land owned by the Township, save and except:
 - (a) Land sold under Section 110 of the Act being 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 (Sale of Land for Tax Arrears) of the Act;

- (d) Easements over municipally-owned lands, as approved by the Council; and
- (e) Road allowances, whether or not opened, unopened, closed or stopped up.

3.2 Notwithstanding Section 3.1 above, Schedule 'A' shall not apply to the Sale of Surplus Land to:

- (a) A Township;
- (b) A local board, including a school board and a conservation authority;
- (c) The Crown in right of Ontario or Canada and their agencies; and
- (d) Land being exchanged with a land owner as part of a procedure that requires the acquisition of that owner's lands for municipal purposes.

4. Register of Real Property Owned or Leased

- 4.1 The Chief Administrative Officer/Clerk shall establish and maintain a register, open to the public, listing and describing the real property owned or leased by the Township.
- 4.2 The Township is not required to list the following classes of real property in the public register:
 - (a) Land 0.3 metres or less in width acquired in connection with an approval or decision under the Planning Act;
 - (b) All highways, roads and road allowances, whether or not opened, unopened, closed or stopped up; and
 - (c) Land formerly used for railway lines.

5. Sale of Land

- 5.1 When the Council has been deemed it desirable to dispose of Land, the Council shall, in a Meeting, pass a resolution declaring any such real property surplus to its needs.
- 5.2 The Council may, by by-law, proceed with the Sale of Surplus Land in accordance with the procedures set out in Schedule 'A' to this By-law.


- 5.3 Appraisals, if obtained, shall be used solely as a guide and shall not be determinative of the terms of price upon which the Council may sell the Surplus Land. The Council may consider all relevant factors to determine an acceptable price for the Surplus Lands, including without limitation the history of the real estate or related properties.
 - 5.4 Following completion of the applicable steps in Clause 1 to 3 inclusive in Schedule 'A' to this By-law, the Council shall consider its intent to sell Surplus Land and, if confirmed, shall determine the most appropriate of the methods of sale set out in Clause 4 of Schedule 'A' to this By-law, having regard to the best interest of the Township.
 - 5.5 The Council shall take all such action as is required to carry out the Sale of Surplus Land in accordance with its agreement of Sale with the purchaser.
 - 5.6 The Chief Administrative Officer/Clerk shall provide a Certificate of Compliance in the form attached to this By-law (the "Compliance Certificate") as Schedule 'B' so that it may be delivered as part of the transfer.
 - 5.7 The Compliance Certificate shall be included in the transfer of the Surplus Land registered in the appropriate Land Registry Office and shall be deemed to be sufficient proof of such compliance with the Act and this By-law. The fee for issuing a Compliance Certificate shall be \$50.00.
 - 5.8 The Council shall have the absolute discretion to select the particular method of sale of Surplus Land or to change the proposed method of sale provided that this discretion is exercised in compliance with Schedule 'A'.
 - 5.9 The Council shall have the absolute discretion to accept any proposal to purchase Surplus Land, to judge the acceptability of any terms or conditions of the Sale, and to judge the sufficiency or acceptability of any price proposed by any purchaser.
 - 5.10 In the event that there is no apparent party expressing an immediate interest in acquiring Surplus Land, the Township may take the necessary steps required to identify a party interested in acquiring Surplus Land. These steps may include, but are not limited to, listing Surplus Land for sale with a real estate company and/or posting an advertisement offering the Surplus Land for sale, with any information necessary for the successful disposal of the Surplus Land.
6. THAT By-law No. 07-72, as adopted on December 6, 2007, be and the same is hereby repealed.

7. THAT this By-law shall come into force and take effect on the final passing thereof.

READ a FIRST and SECOND time this 19th day of May, 2011.

READ a THIRD time and **FINALLY PASSED** this 19th day of May, 2011.


Mayor, D. Mennill


Clerk, M. Casavecchia

SCHEDULE 'A'
TO BY-LAW NO. 11-35

PROCEDURES FOR THE SALE OF SURPLUS LAND

1. Survey of Land

The Council, if it deems necessary, may obtain a survey of the Surplus Land proposed to be sold from a Registered Ontario Land Surveyor.

2. Appraisal

2.1 Subject to Clause 2.2 below, the Council shall obtain an Appraisal of the Surplus Land proposed to be sold.

2.2 Notwithstanding Section 2.1 above, the Township shall not be required to obtain an Appraisal for any class of land as follows:

2.2.1 land 0.3 metres or less in width acquired in connection with an approval or decision under the Planning Act;

2.2.2 land formerly used for railway lines if sold to an owner of land abutting the former railway land;

2.2.3 land that does not have direct access to a highway if sold to the owner of land abutting the land;

2.2.4 land repurchased by an owner in accordance with section 42 of the *Expropriations Act*; and

2.2.5 land sold under Sections 107 and 108 of the Act.

3. Notice

3.1 The Chief Administrative Officer/Clerk shall publish a notice of the intended sale of the Surplus Land at least once in a Newspaper and with notice to be posted on the Township's website at www.malahide.ca under Public Notices.

3.2 The notice shall specify that anyone wishing to comment on the proposed sale may do so by delivering such comment in writing to the Chief Administrative Officer/Clerk at the Municipal Office.

3.3 The final date for submitting such comments shall be specified in the notice. Any comments received shall be considered by the Council which

in its sole discretion shall decide if any further action shall be taken on same.

4. The Council shall determine, in its sole discretion, by resolution the method of Sale of the Surplus Land which includes: sale by public tender, sale by real estate firm or broker, direct sale to a landowner, or direct sale to the public.

4.1 Sale by Public Tender

Should the Council determine to sell the Surplus Land by tender the following shall apply:

- (a) Costs incurred or anticipated for the Sale of the Surplus Land such as legal fees, survey fees, appraisal fees, encumbrances, advertising, and improvements, shall be established;
- (b) An estimated bid price shall be established which shall not be less than the appraised value plus the additional costs referred to in Clause 4.1(a) above. Notwithstanding the foregoing, the Council may accept an amount less than the estimated bid amount;
- (c) An advertisement shall be published for two (2) consecutive weeks within a Newspaper and with notice to be posted on the Township's website at www.malahide.ca under Public Notices. The advertisement shall include a brief description of the property, including a small location sketch, and shall specify the final date that offers will be accepted and shall include the following statement "the highest or any offer may not necessarily be accepted";
- (d) The tender documents shall be delivered in person to the Chief Administrative Officer/Clerk by the date specified therein; and
- (e) Any tender otherwise acceptable to the Township shall be submitted to the Council for approval of the sale price.

4.2 Sale by Real Estate Firm or Broker

Should the Council determine to engage a real estate firm or broker to sell the Surplus Land, the following shall apply:

- (a) Costs incurred or anticipated for Sale of the Surplus Land such as legal fees, survey fees, appraisal fees, encumbrances, advertising and improvements shall be established;

- (b) A listing price shall be established which shall not be less than the appraised value plus the additional costs referred to in Clause 4.2(a) above;
- (c) The Chief Administrative Officer/Clerk, or designate, shall be authorized to sign the Listing Agreement or Agreement of Purchase and Sale;
- (d) The offers to purchase the surplus land shall be submitted to the Chief Administrative Officer/Clerk, or designate on a standard offer to purchase form or form drafted by a lawyer and shall provide for an irrevocable period of at least fourteen (14) days;
- (e) The Township may make a counter offer subject to the Council approving the sale price; and
- (f) All offers otherwise acceptable to the Township shall be submitted to the Council for approval of the sale price.

4.3 Direct Sale to a Landowner

Should the Council determine to sell the Surplus Land directly to a landowner, (other than a mortgagee or chargee) who abuts the Surplus Land or an owner of other land in close proximity (other than a mortgagee or chargee) who claims legal interest in the property such as, but not limited to: an easement, a right-of-way, possessory title or a restrictive covenant. The following shall apply:

- (a) Costs incurred or anticipated for Sale of the Surplus Land such as legal fees, survey fees, appraisal fees, encumbrances, advertising and improvements shall be established;
- (b) An estimated sale price shall be established which shall not be less than the appraised value plus the additional costs referred to in Clause 4.3(a) above. Notwithstanding the foregoing, the Council may accept an amount less or higher than the estimated sale price;
- (c) In the event that Clause 2.3 applies to the Surplus Land and no appraisal is obtained, the estimated sale price shall not be less than the costs referred to in Clause 4.3(a) above; and
- (d) All agreements otherwise acceptable to the Township shall be submitted to the Council for approval of the sale price.

4.4 Direct Sale to the Public

Should the Council determine to sell the land directly to the public, the following shall apply:

- (a) Costs incurred or anticipated for Sale of the Surplus Land such as legal fees, survey fees, appraisal fees, encumbrances, advertising and improvements shall be established; and
- (b) An estimated sale price shall be established which shall not be less than the appraised value plus the additional costs referred to in Clause 4.4(a) above. Notwithstanding the foregoing, the Council may accept an amount less or higher than the estimated sale price.
- (c) The Chief Administrative Officer/Clerk, or designate, shall be authorized to sign the Agreement of Purchase and Sale.
- (d) The Township may make a counter offer subject to the Council approving the sale price; and
- (e) All offers otherwise acceptable to the Township shall be submitted to the Council for approval of the sale price.

SCHEDULE 'B'
TO BY-LAW NO. 11-35

The Corporation of the Township of Malahide
Certificate of Compliance
Section 270(1) of the Municipal Act, 2001, as amended

Certificate of Compliance for the sale or disposition of surplus land of The Corporation of the Township of Malahide described as:

I hereby certify that:

1. The Council of The Corporation of the Township of Malahide enacted By-law No. 11-35, being a By-law to govern the sale of surplus land on May 19, 2011.
2. The property described above was declared surplus by the Council of The Corporation of the Township of Malahide under Resolution No. _____ enacted on _____.
3. An appraisal of the fair market value was obtained on _____ by _____.
4. The property sale or disposition is exempt from the requirement to obtain an appraisal of its fair market value under the following exemption:

5. Public notice of intent to sell or dispose of the property was given by the following methods:

Signature of Clerk

Date