

# THE CORPORATION OF THE UNITED TOWNSHIPS OF HEAD, CLARA & MARIA

## BY-LAW NUMBER 2009- 08

**Being** a by-law to set out procedures for the purchase and sale or other acquisition or disposition of land by the Corporation of the United Townships of Head, Clara & Maria (Land Sales & Purchase Procedure By-law).

**WHEREAS** Section 270 of the *Municipal Act, 2001*, as amended, requires The Corporation of the United Townships of Head, Clara & Maria ("Municipality") to adopt and maintain policies with respect to the sale and other disposition of land;

**NOW THEREFORE** the Council of The Corporation of the United Townships of Head, Clara & Maria hereby enacts as follows:

1. **THAT** this By-law will be known and may be cited as the Land Sales and Purchase Procedure By-law.
2. **THAT** the following documents and policies shall be utilized by staff to facilitate the management of the purchase or sale of land by the Municipality.
  - 2.1. Schedule A – Clerk's Certificate as to Land Purchase
  - 2.2. Schedule B – Sale of Road Allowance Policy and Procedures
  - 2.3. Schedule C – Sample Surplus Land Resolutions
  - 2.4. Schedule D – Sample Surplus Land Ads/Notices
  - 2.5. Schedule E – Application for Sale of Municipal Road Allowance
3. **DEFINITIONS**
  - 3.1. **FOR** the purposes of this By-law, the following words shall have the meaning ascribed herein, unless the context otherwise requires:
    - 3.1.1. "Buildable lot" means lands of sufficient size to permit the lands to be utilized as an individual parcel of land in conformity with the Official Plan and compliance with the Zoning By-law regulations.
    - 3.1.2. "Clerk" means the Clerk of The Corporation of the United Townships of Head, Clara & Maria or designate.
    - 3.1.3. "Council" means the Council of The Corporation of the United Townships of Head, Clara & Maria or such Committee appointed by Council from time to time to oversee land acquisitions or land sales.
    - 3.1.4. "Land" means any interest in lands, whether such lands are vacant or not, and without limiting the generality of the foregoing, includes easements, rights-of-ways, leaseholds of 21 years or more.
    - 3.1.5. "Municipal Road" means a road within the geographical limits of the Municipality over which the Municipality has jurisdiction.
    - 3.1.6. "Municipality" means The Corporation of the United Townships of Head, Clara & Maria.
    - 3.1.7. "Person" includes an individual and or a corporation and the successors, assigns, heirs, executors, administrators, or other legal representatives of a person to whom the context may apply according to law.
    - 3.1.8. "Purchase", "acquire" or "acquisition" means any transaction whereby an interest in Land is transferred to the Municipality with or without consideration.
    - 3.1.9. "Sale", "sell", "selling" and "sold" means any transaction whereby an interest in Land is transferred, disposed of or leased from the Municipality with or without consideration for a period of 21 years or more.
    - 3.1.10. "Value" and "Valuation" means the valuation of the fair market value of the Land in accordance with clause 15 of this By-law.

### SALE OF LAND

The Council of the Municipality of the United Townships of Head, Clara & Maria may declare any Land surplus and in the same or subsequent resolution or by-law may proceed to sell such Land in accordance with the procedures set out in this By-law, as applicable.

#### **4. PROCEDURES**

- 4.1. The Municipality may commence land sale procedures at its own initiation or upon the receipt of a written request or enquiry from an applicant.
- 4.2. Upon direction of Council or receipt of a written request or enquiry, the Clerk will circulate the land sale direction or request to the appropriate Municipal staff to obtain their comments on whether the property may be considered surplus to the Municipality's needs or any other issues which would need to be addressed prior to or in conjunction with the potential land sale.
- 4.3. The Clerk shall prepare a Report to Council based on the comments received, including a recommendation as to whether or not the lands could be considered surplus and identification of any other issues. In the event that the report includes a recommendation to deem the lands as surplus, the report shall also address the proposed method of valuation, sale and notice required together with cost estimates and any conditions.
- 4.4. Council may establish in its Fees By-law, an application fee to cover the Municipality's costs associated with processing a request or enquiry from an applicant.
- 4.5. Unless an exemption is provided in this By-law, before selling any Land, Council shall:
  - 4.5.1. declare the Land to be surplus by by-law or resolution passed at a meeting open to the public on forms as in Schedule "C" to this By-Law;
  - 4.5.2. value the Land in accordance with clause 10 of this By-law; and
  - 4.5.3. give notice to the public in accordance with clause 12 of this By-law or the Municipal Notice By-Law if not provided for herein.
- 4.6. For the purposes of the surplus land declaration, only Municipal Council may pass such a resolution or by-law. The passage of such resolution or by-law does not obligate the Municipality to sell such lands and such a declaration may be rescinded by resolution at any time before a binding agreement of purchase and sale has been entered into by the Municipality, or if no formal agreement of purchase and sale is required, at any time prior to the completion of the sale.
- 4.7. Specific procedures for closing and disposing of Municipal Road Allowances are set out in the document attached to this by-law as Schedule "B". The application should be made on the form as shown in Schedule "E" to this By-Law.
- 4.8. Consideration should also be given to Corporation of the United Townships of Head, Clara & Maria Road Construction Minimum Standard Schedule "A" To By-Law 2008-06 which refers to those instances where Road Allowances might be sold.
- 4.9.

#### **5. NOTICE**

- 5.1. Except as provided in clause 6 & 7 herein, before selling any Land, the Clerk shall give notice to the public of the proposed Land Sale in a single publication in a newspaper or other publication that is, in the Clerk's opinion, of sufficient general circulation in the area of the subject Land to give the public reasonable notice of Council's intention and by posting notice on the Municipality's website.
- 5.2. This notice shall be given at least fourteen (14) days prior to the Council Meeting which includes this item on the agenda; shall be made in accordance with Schedule "D" to this By-Law and shall include the following:
  - 5.2.1. a legal description of the lands, municipal address or location map which the Clerk deems sufficient to identify the lands;
  - 5.2.2. the proposed purchase price or formula upon which the sale price is determined;
  - 5.2.3. the proposed use of the lands or reason for the land sale;
  - 5.2.4. information advising the public when and where additional information may be obtained or where comments may be submitted for Council consideration;

5.2.5. the general identification of the purchaser (e.g. adjacent land owner);

5.2.6. the date on which the resolution or by-law declaring the lands to be surplus was/will be passed.

## **6. ABSOLUTE EXEMPTION FROM SALE PROCEDURES**

6.1. Sections 8, 10, 11, 12 and 13 of this By-law do not apply to:

6.1.1. Land Sold under Section 110 of the *Municipal Act, 2001 (municipal capital facilities)*;

6.1.2. Classes of Land described under Part XI of the *Municipal Act, 2001 (tax sales)*;

6.1.3. Land being re-conveyed to the Person that originally conveyed it to the Municipality or such other Person as that Person may designate in writing, where:

6.1.3.1. the Land is held by the Municipality in trust or subject to a condition, obligation or legislation that requires a specific conveyance by the Municipality;

6.1.3.2. the Land is held by the Municipality as security for the performance of obligations for that Person pursuant to an agreement between the Person and the Municipality; or

6.1.3.3. the Land was conveyed to the Municipality for municipal purposes, and was not necessary for the Municipality's purposes or was intended to be re-conveyed to the Transferor;

6.1.4. Land that was transferred to, or vested in the Municipality by by-law, operation of law or otherwise which neither the Municipality nor the registered owner intended to vest or be transferred;

6.1.5. Land 0.3 metres in width or such other size which was acquired for road purposes or planning approval or other decision and subsequently sold to the adjoining landowner or any Government Authority;

6.1.6. Easements granted to public utilities, electricity distribution company, power generation company, telephone companies, or similar entity.

6.1.7. Temporary Easements with a term of 5 years or less granted to any person for a specific purpose;

6.1.8. Easements granted to any municipality or Government Authority;

6.1.9. Land less than 10,000 square metres in area, sold to any municipality, Local Board, school board, conservation authority or other Government Authority.

For Land Sales under this Section, the Clerk shall provide an Information Report to Council and the Clerk shall prepare the necessary by-law, as required, for Council consideration.

## **7. PUBLICATION OF NOTICE NOT REQUIRED**

7.1. The publication of Notice is not required for the following classes of Land or type of transaction provided the purchaser or transferee is not a manufacturing business or other industrial or commercial enterprise:

7.1.1. Closed Municipal Roads if sold to the owner(s) of Land abutting the closed Municipal Road and the sale of the closed road would not impact on the access rights for any other land owner(s). The exemption from Notice does not apply if the road is being closed and sold under the same by-law;

7.1.2. Land formerly used for railway lines if sold to an owner(s) of Land abutting the former railway land and the sale of the rail right-of-way would not impact on the crossing rights for any other land owner(s);

7.1.3. Land that does not have direct access to a highway if sold to the owner of land abutting the Land with access. The exemption from Notice does not apply when the Land abuts more than one property and the Land is not being divided and sold to all abutting owners;

7.1.4. Land repurchased by an owner in accordance with the *Expropriations Act*;

- 7.1.5. Land sold under Sections 107 (general power to make grants), 108 (small business assistance) and 109 (community development corporations) of the *Municipal Act, 2001*;
- 7.1.6. Land sold to any municipality;
- 7.1.7. Land sold to a Local Board subject to the Board having been given the authority to own land by statute or by-law;
- 7.1.8. Land sold to a school board or any Government Authority;
- 7.1.9. Land 0.3 metres in width or such other size which was acquired for road purposes or by planning approval or decision;
- 7.1.10. Any Land that is exempt by Regulation made by the Minister of Municipal Affairs and Housing.

Where the publication of Notice is not required under this Section, notice shall be given by way of written communication between the parties involved in the transaction including first class mail, registered mail, facsimile transmission, email or such other method of communication as determined by the Clerk as per the Municipal Notice By-law #2009-06 and acceptable to both parties. Said communication shall set out the general terms and reason for the Land sale.

Notwithstanding the above exemptions, Council may direct the Clerk to give notice by publication where it is deemed in the public interest to do so.

## **8. METHODS OF SALE**

- 8.1. Land may be sold by public bid, by listing with a real estate firm or broker, by land exchange, by auction, by sole source, by offer to the adjacent land owner(s), by advertisement or in such other appropriate manner as may be directed by Council given the facts and circumstances associated with each land sale.
- 8.2. If Land is to be sold by public bid, notice will include the following:
  - 8.2.1. the date for submitting bid;
  - 8.2.2. the notation "the highest or any bid may not necessarily be accepted";
  - 8.2.3. the date, time, location of opening of bids;
  - 8.2.4. the closing date of bids;
  - 8.2.5. any reserve bid price; and
  - 8.2.6. when and where the bidders may obtain the bid form and any other bidder information.
- 8.3. Notwithstanding Section 15 of this By-law, Council may authorize the sale of Land for less than the fair market value if in the opinion of the Council it is in the best interest of the Municipality to sell the Land for less than fair market value, subject to the requirement to obtain fair market value from a manufacturing business or other industrial or commercial enterprise.

## **9. TERMS OF DISPOSITION**

- 9.1. Upon approval or acceptance of the terms and conditions of a sale by Council, the agreement of purchase and sale and any ancillary documents shall be prepared by the Clerk, in consultation with the Municipal Solicitor as required. A formal agreement may not be required if the lands are exempt pursuant to Section 17 above.
- 9.2. Upon confirmation by the Clerk that the agreement of purchase and sale is in accordance with terms of the land sale by-law, the Reeve and Clerk shall be authorized to take all actions and execute all documentation required to finalize the Sale.
- 9.3. The Clerk may, but is not required to, issue a Certificate in respect of the Sale of Land, verifying that to the best of the Clerk's knowledge, the requirements of this By-law and the *Municipal Act, 2001* have been complied with, where applicable. The Certificate shall be in a format similar to that attached as Schedule "A" to this by-law. Council may establish a fee for the Certificate of Compliance in the Fees By-law.

## PURCHASE OF LAND

## **10. PROCEDURES**

- 10.1. Authority as granted will be limited to the negotiations of an agreement of purchase and sale as agent for Council which will not be binding until approved by Council and executed by the Reeve and Clerk.
- 10.2. The purchase price will be established either by reference to the policies or procedures that govern the type of land purchased or by reference to the specific by-law for the Land in question.

## **11. LAND PURCHASES FOR ROAD PURPOSES**

- 11.1. The Clerk is authorized to negotiate the purchase of Land in compliance with procedures and policies of Municipal Council set out in this By-law;
- 11.2. A Municipal report shall be presented to Council regarding the reason for the proposed Land acquisition and the proposed method of purchase, valuation and valuation as deemed appropriate. Prior to the land purchase, a by-law shall be presented to Council to allow for advance authorization to enter into a binding Agreement of Purchase and Sale.
- 11.3. Agreements of Purchase and Sale will be prepared by the Municipal Solicitor, executed by the Reeve and Clerk, indicating that approval has already been granted from Council, and presented to the landowner for execution. The landowner will be informed that the authority of the Municipal staff for the purchase of the Land for road purposes has been provided by Council.

## **12. LAND PURCHASES BY EXPROPRIATION**

- 12.1. The *Municipal Act, 2001* authorizes the Municipality to acquire lands by way of expropriation.
- 12.2. Expropriation may be authorized by Municipal Council if direct negotiations fail. In these circumstances the requirements of the *Expropriation Act* will be followed.

## **13. LAND PURCHASES FOR OTHER PURPOSE**

- 13.1. The Municipal staff is authorized to negotiate the purchase of Land that is in Council's opinion required for other Municipal purposes which may include municipal facilities, public parking facilities, public utilities, resolution of legal matters or such other purposes as deemed appropriate by Council.
- 13.2. The negotiations for the purchase of Land will be in compliance with this By-law amending the template Offer of Sale and Purchase as required.
- 13.3. Once approval has been granted by Council, Agreements of Purchase and Sale will be prepared by the Clerk, in consultation with the Municipal Solicitor as required, in the standard form used by the Ontario Real Estate Association. The Agreement shall then be presented to the land owner for execution.
- 13.4. If an Agreement is signed by a proposed purchaser, the signed Agreement of Purchase and Sale will be presented to Council attached to a report seeking approval of the terms as negotiated and approval of the purchase by-law. If Council approves the offer as presented the purchase by-law will be adopted authorizing the Reeve and Clerk to execute the Agreement of Purchase and Sale and take all actions and execute all documents necessary to close the transaction.

## **GENERAL PROVISIONS**

14. The Clerk of the Municipality shall have authority to execute any documents or instruments, which the Municipal Solicitor has advised are necessary to establish the Municipality's ownership of Land or to correct title to Land.
  - 14.1. If any provision of this By-law is declared invalid for any reason by a court of competent jurisdiction the remainder of this By-law shall still continue in force.
  - 14.2. Nothing will fetter the discretion of Council to retain Land or to Sell Land, on such terms and conditions as may be fixed by Council, to whoever the Municipality deems appropriate, regardless of whether the Sale is to the Person who may or may not have presented the highest or best offer.

14.3. Upon this By-law coming into force, By-law No. 2003-07 is repealed except with respect to any proceedings previously completed or currently underway pursuant thereto.

**15. VALUATION**

15.1. Where Land needs to be Valued, the Clerk shall select a method of valuation, including but not limited to:

15.1.1. an appraisal or an opinion by an independent qualified appraiser;

15.1.2. the value assigned by the Municipal Property Assessment Corporation or established by a Municipal Assessor based on the configuration and proposed use of the lands;

15.1.3. an opinion of value by a licensed real estate agent;

15.1.4. the amount set out in an agreement of purchase of sale entered into by willing purchasers evidencing the market value; or

15.1.5. such other means as may be specifically determined as appropriate by Council or the Clerk in the circumstances.

15.2. Where a land sale would result in, or facilitate, the creation of a buildable lot such method of valuation shall be limited to an independent qualified appraiser.

**THAT** this By-law will come into force and take effect on the date it is passed by the Council of The Corporation of the United Townships of Head, Clara & Maria.

**READ** a first and second time this 3<sup>rd</sup> day of April, 2009.

**READ** a third time short and passed this 3<sup>rd</sup> day of September, 2010.

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TAMMY STEWART, REEVE

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MELINDA REITH, CLERK