The Municipal Corporation of the Town of Fort Erie

By-law No. 60-2017

Being a By-law to Establish a Policy for the Sale of Land Owned by the Town of Fort Erie and to Repeal By-law No. 184-07

WHEREAS Section 270(1) of the *Municipal Act, 2001,* as amended, provides that a municipality shall adopt and maintain a policy with respect to its sale and other disposition of land, and

WHEREAS By-law No. 184-07 was passed by the Municipal Council of the Town of Fort Erie on November 13, 2007 to establish a policy for the disposition of real property owned by the Town of Fort Erie (the "Sale of Land Policy") and to repeal previous related by-laws, and

WHEREAS Report No. CS-11-2017 was considered at the Council-in-Committee Meeting held on May 15, 2017, and subsequently approved and authorized by Council, to adopt a revised Sale of Land Policy which includes industrial land sale and housekeeping amendments, and

WHEREAS the Municipal Council of the Town of Fort Erie deems it desirable to repeal the said by-law and establish a new policy for the sale of land owned by the Town of Fort Erie;

Now therefore the Municipal Council of The Corporation of theTown of Fort Erie enacts as follows:

1. **That** the Policy for the Sale of Land Owned by the Town of Fort Erie is authorized, approved and adopted in the form of Schedule "A" attached hereto, which forms part of this by-law.

2. **That** By-law No. 184-07 is repealed.

3. **That** the Clerk of the Town is authorized to effect any minor modifications, corrections or omissions, solely of an administrative, numerical, grammatical, semantical or descriptive nature to this by-law or its schedules after the passage of this by-law.

Read a first, second and third time and finally passed this 23rd day of May, 2017.

Mayor

Clerk

I, Laura Bubanko, the Clerk, of The Corporation of the Town of Fort Erie certifies the foregoing to be a true copy of By-law No. 60-2017 of the said Town. Given under my hand and the seal of the said Corporation, this day of , 20

Schedule "A" to By-law No. 60-2017

Short Title

SALE OF LAND POLICY

PART 1 – Definitions

1.1. In this by-law:

(a) **"Abutting"** shall mean a parcel of land adjoining another parcel of land having one (1) or more lot lines in common;

(b) **"Applicant"** means a person who has enquired or requested to purchase Town land;

(c) **"Appraisal"** means a fair market valuation of land prepared by an accredited Appraiser;

(d) **"Appraiser"** means a member in good standing of the Appraisal Institute of Canada, holding an Accredited Appraiser Canadian Institute or Canadian Residential Appraiser designation as appropriate;

(e) **"as is"** means without regard for state of repair, location of any and all structures, walls, retaining walls or fences (freestanding or otherwise) or encroachment by buildings or fences or otherwise, on the land or adjoining properties or streets, and without warranty or representation as to use, environmental contamination, hazards or risks;

(f) **"Full Marketability Land"** means land which would in the opinion of the Director, Planning & Development Services, or designate, be of interest to potential purchasers in the open market due to size, shape, location, topography, environmental condition, permitted land uses, or any other factor which the Director, Planning & Development Services, or designate, considers relevant;

(g) **"highway"** means:

i. all highways that existed on December 31, 2002,
ii. all highways established by by-law on or after January 1, 2003,
iii. all highways transferred to the municipality under the *Public Transportation and Highway Improvement Act*,
iv. all road allowances made by the Crown surveyors located in the municipality,
v. all road allowances, highways, streets and lanes shown on a registered plan of subdivision;

(h) **"land(s)"** shall mean real property and any improvements thereon owned by the Town, including highways which have been or may be stopped up and closed, but does not include:

(i) any land which Council has otherwise determined by resolution or by-law is not available for sale;

(i) **"Land Committee"** means the Town of Fort Erie Land Committee as established by By-law 168-91, as amended or replaced;

(j) **"Limited Marketability Land"** means land which would, in the opinion of the Director, Planning & Development Services, or designate, be of limited interest to potential purchasers due to size, shape, location, topography, environmental condition, land use restrictions, or any other factor which the Director, Planning & Development Services, or designate, considers relevant;

(k) **"Official Plan"** means the Official Plan of the Town of Fort Erie, as amended or replaced from time to time;

(l) **"Real Estate Broker"** means a Real Estate Broker registered under the *Real Estate and Business Brokers Act, 2002,* as amended and Regulations thereto;

(m) **"sale"** and **"sell"** shall not include:

(i) a lease of land by the Town;
(ii) transfers of easement or rights-of-way by the Town;
(iii) releases of restrictive covenants by the Town; and
(iv) releases of rights of first refusal by the Town.

(n) **"Town Solicitor"** means and includes the Town's Solicitor or external legal counsel from time to time, and in his/her absence, the Chief Administrative Officer or his/her designate.

PART 2 - General

2.1 A by-law containing a legal description of the land and the identity of the purchaser shall be passed to approve the sale of land.

2.2. Land required for any municipal purpose, including but not limited to present or future municipal facilities, infrastructure and parks, is not available for sale to the public.

2.3 Any survey and/or reference plan required shall be obtained at the expense of the purchaser(s) unless Council by resolution otherwise determines.

2.4 Council may impose conditions of sale if deemed appropriate.

2.5 All land, with or without improvements, shall be sold on an "as is" basis unless Council determines otherwise.

2.6 The Town is under no obligation by virtue of the sale of land to grant any approvals, including approvals for changes to the Official Plan or zoning by-law or with respect to site plan control, minor variances, and building permits, or to support approvals required by any other approval authority, which may be necessary for any contemplated use of the land by the purchaser.

2.7 Any provisions for public notice provided for in this policy shall prevail over any other existing or future public notice by-law passed by Council.

PART 3 - Appraisals

3.1 One (1) Appraisal of the fair market value of land to be sold, prepared by an Appraiser in accordance with the requirements of the Appraisal Institute of Canada, shall be obtained.

3.2 Notwithstanding Section 3.1, the Director, Planning & Development Services, or designate, may:

(a) dispense with the requirement of an Appraisal for the following classes of land:

(i) Land 0.3 metres or less in width acquired in connection with an approval or decision under the *Planning Act*;
(ii) Land for which the Town has obtained an Appraisal within the preceding one (1) year, in the discretion of the Director, Planning & Development Services, or designate.

(b) dispense with the requirement of an Appraisal for the disposition of land to:

(i) A municipality;
(ii) A corporation incorporated by a municipality;
(iii) A municipal service board of a municipality;
(iv) A local board, including a school board and a conservation authority;
(v) The Crown in right of Ontario or Canada and their agencies.

PART 4 – Land Deemed to be Not Marketable

4.1 In addition to any other provisions herein, or any resolution or by-law passed by Council, the following lands are deemed to be not marketable:

(a) land situated in the Open Space or Environmental Protection designations of the Official Plan, as amended from time to time, in order to protect and promote the public enjoyment of natural features;

(b) Any land which Council has by resolution or by-law declared shall not be sold.

4.2 Town lands deemed to be not marketable are not available for sale to the public.

SALE OF LIMITED MARKETABILITY LAND

PART 5 –Limited Marketability Land – Policy Statements

5.1 The following policy statements shall be applied to all Limited Marketability Land:

5.1.1 Limited Marketability Land shall only be sold to an abutting owner(s) whose property if combined with the Town's land creates a configuration which is acceptable to the

Director, Planning & Development Services, or designate, in accordance with good planning principles.

5.1.2 The land shall be required to legally merge in title with the abutting owner's property. Where necessary, Council shall pass a by-law deeming the Town land and/or the abutting owner(s) land not to be part of a registered plan of subdivision in order to effect the merger, and the by-law shall be registered on title by the Town prior to the registration of the Transfer/Deed to the purchaser. No fee shall be charged to the abutting owner for the preparation and registration of the Deeming By-law.

5.1.3 In addition, the following restrictions shall apply to land in the Agricultural, Rural, or Rural Residential Designations of the Official Plan or outside the Urban Area:

a) if the total area of the combined Town land and the abutting owner's property is less than 0.4 hectares (1 acre) in size, the Town land will be recommended for sale to the abutting owner, only if there is an existing dwelling or non-residential building on the abutting land; or

b) if the total area of the combined Town land and the abutting owner's property is greater than 0.4 hectares (1 acre) in size, but less than 1 hectare (2.2 acres) in size, the Town land may be sold to the abutting owner notwithstanding that there is no existing dwelling

PART 6 – Process for Sale of Limited Marketability Land

6.1 The initial enquiry by a prospective purchaser (Applicant) shall be made to the Planning & Development Services Department.

6.2 The request process for the sale of Limited Marketability Land shall be divided into phases, as follows:

6.2.1 PHASE 1 – Preliminary Review

Part 4 of this policy shall be reviewed to determine its applicability, and the Applicant shall be advised accordingly.

6.2.2 PHASE II - Circulation

Staff shall conduct a formal circulation to internal departments and any outside agencies as appropriate, to determine any objections to the sale or conditions which may be required. The Applicant shall be advised of the results of this circulation. In addition, a site visit shall be conducted by Infrastructure Services and Planning & Development Services staff to determine any municipal requirements which may need to be addressed upon a sale.

6.2.3 PHASE III – Collection of Deposit and Appraisal

(a) Should the Applicant wish to proceed with the request to purchase the land, the deposit provided for in Part 7 shall be required.

(b) Following receipt of the deposit, an Appraisal of the land shall be obtained in accordance with Part 3 of this Policy.

6.2.4 PHASE IV – Notice to Abutting Owners and Disclosure of Appraisal

(a) The Applicant shall be advised of the appraised value and be required to submit his/her written offer to purchase the land at the appraised value within three (3) weeks, failing which, he/she shall be deemed to have declined to purchase the land.

(b) All abutting property owners shall also be sent notice via regular mail of the following:

(i) a request to purchase Town land has been received;
(ii) the identity of the Applicant; and
(iii) the appraised value;

and shall be required to submit any comments or objections to the sale of the lands in writing, or, submit the deposit as provided in Part 7 together with their offer in writing to purchase the lands at the appraised value, within three (3) weeks from the date of such notice, failing which, they shall be deemed to have no objection nor any interest in purchasing the land. Comments and objections will become part of the public record and included in any subsequent Report to Council.

(c) In the event that:

(i) an abutting owner submits their written offer to purchase the land at the appraised value, and

(ii) provided dividing the land equally between the Applicant and the abutting owner would create a configuration acceptable to the Director, Planning & Development Services, or designate, in accordance with good planning principles,

then, the Applicant and the abutting owner may agree to divide the land equally between them with the purchase price and all survey/reference plan costs shared proportionately. If the Applicant and the abutting owner do not agree to divide the land, the land will be offered to each through a tender process to the highest bidder (the appraised value being the Reserve Bid), subject to the final approval by Council.

6.2.5 PHASE V– Report to Council

Following receipt of the Applicant's and/or another abutting owner's written offer to purchase the land at the appraised value and payment of the deposit required in Part 7, a report shall be submitted to Council for approval, with staff's recommendations.

6.3 The Agreement of Purchase and Sale shall be prepared by the Town in a form satisfactory to the Town Solicitor, who shall have authority to determine and extend the time for closing real estate transactions.

6.4 The Transfer/Deed of Land and Land Transfer Tax Affidavit, or electronic version thereof, shall be prepared in registrable form at the expense of the purchaser.

6.5 In the event that sale of the land is not completed within one (1) year from the date on which Council passes the by-law authorizing the sale, subsequent requests shall be subject to the provisions of this Policy in all respects.

PART 7 –Limited Marketability Land – Payment of Deposit

7.1 A deposit in the amount of $310.00 shall be required as follows:

(a) If the sale of land is prohibited in this policy, and the Applicant wishes to proceed, then the deposit is payable before proceeding to Phase II;

(b) If the sale of the land to the Applicant will be recommended, payment of the deposit shall be required prior to ordering an Appraisal and submitting a Report to Council;

(c) Following notice, if another abutting owner provides his written offer to purchase the land at the appraised value, such owner shall be required to submit payment of the deposit with his written offer to purchase the land.

7.2 The deposit shall be refunded, applied to the purchase price or forfeited, at the times and in the circumstances set out below:

In the event that:

(i) the Applicant abandons the request before a Report is submitted to Council, the deposit shall be forfeited without interest or deduction;

OR

the sale of land is:

(ii) not recommended by staff, and Council denies the request, the deposit shall be forfeited without interest or deduction;
(ii) recommended by staff and Council denies the request, then the deposit shall be refunded without interest or deduction;
(iii) approved by Council and the Applicant does not complete the transaction for any reason other than one which may be contemplated in the Agreement of Purchase of Sale, the deposit shall be forfeited without interest or deduction.

7.3 Should a tendering process occur:

(i) the deposit paid by the successful bidder shall be applied towards the purchase price if the sale is approved and the transaction is completed;
(ii) the deposit paid by the unsuccessful bidder shall be refunded without interest or deduction;
(iii) and the successful bidder does not complete the transaction for any reason other than one which may be contemplated in the Agreement of Purchase of Sale, the deposit shall be forfeited without interest or deduction.

SALE OF FULL MARKETABILITY LAND

PART 8 – Sale of Full Marketability Land (Excluding Industrial Land)

8.1 The Land Committee shall make recommendations to Council as to those Full Marketability Lands which may be declared surplus to the needs of the Town and may be approved for sale by resolution of Council.

8.2 Full Marketability Land shall be marketed to the public through listing with a Real Estate Broker or in such other manner which Council approves, having regard to the nature of the property. Alternative marketing strategies may include invitation to tender, and request for proposal.

8.3 When Full Marketability Lands are being sold, all of the abutting property owners shall be notified by letter of the proposed disposition, such notice being provided at the same time as the lands being marketed either through a Real Estate Broker or such other method approved by Council.

8.4 Any offer to purchase shall be submitted by a Real Estate Broker to the Director, Planning & Development Services, who shall review the same with Council. Acceptance or refusal of an offer to purchase shall be in Council's sole discretion.

8.5 The Agreement of Purchase and Sale shall be in a form satisfactory to the Town Solicitor.

PART 9 – Sale of Industrial Land

9.1 Industrial Full Marketability Land owned by the Town shall be marketed through the Economic Development and Tourism Corporation (EDTC) where deemed appropriate in the discretion of the General Manager of the EDTC. All other proposed sales of Industrial land shall be governed by Part 8 hereof.

9.2 Following consultation with internal departments and outside agencies as appropriate, the General Manager of the EDTC shall submit recommendations to Council for the sale of such lands.

9.3 The General Manager of the EDTC shall submit any offers for the purchase of such lands to Council.

9.4 Should Council determine to sell the land, the Agreement of Purchase and Sale shall be prepared by the Town in a form acceptable to the Town Solicitor.

PART 10 - Non-Application of Policy

10.1 This by-law does not apply to any sale of land by the Town pursuant to the provisions of Part X1 of the *Municipal Act, 2001,* as amended (Sale of Land for Tax Arrears) and any Regulations thereto from time to time, which shall be effected in conformity with the said *Act* and Regulations.

10.2 This by-law does not apply to sale of land pursuant to other applicable legislation, including, but not limited to:

(a) Sections 107, 108, 110 and 203 of the *Municipal Act, 2001,* S.O. 2001, c.25, as amended; and
(b) Sections 28 and 60 of the *Planning Act*, R.S.O. 1990, c. P 13, as amended; and
(c) any approvals granted under the provisions of the *Planning Act*, R.S.O. 1990, c. P.13, as amended; and
(d) Sections 11 and 42 of the *Expropriations Act,* R.S.O. 1990, c. E. 26, as amended;

and any regulations thereunder.

10.3 The procedures for the closure of highways shall be in accordance with the *Municipal Act, 2001*, as amended, and other relevant statutes.

PART 11 - Application and Administration of Policy

11.1 This policy shall be read and applied fairly with such variations as circumstances or the nature of the subject matter require provided the general purpose, intent, meaning and spirit of the policy are maintained.

11.2 The Director, Planning& Development Services shall be responsible for developing and implementing forms and procedures for the administration of this policy by Town staff. The Town Solicitor shall be responsible for the closing of sale transactions.