

**Municipality of Middlesex Centre  
By-Law 2020-034**

**Being a by-law to amend By-Law 2012-043 to govern the sale and other disposition of land**

**WHEREAS** Council for the Municipality of Middlesex Centre (the “**Municipality**”) desires to amend By-Law Number 2012-043 for the purpose of providing the additional method of a public Request for Proposals process to be amongst the choice of means to affect potential sales of surplus land.

**NOW THEREFORE** the Council of the Municipality of Middlesex Centre does hereby enact as follows:

**Incorporation of By-Law Number 2012-043 *mutatis mutandis***

- 1) The provisions of By-Law 2012-043, which is attached hereto as **SCHEDULE “A”** and forms a part of this Amending By-Law 2012-043, are incorporated *mutatis mutandis* into this Amending By-Law. By-Law Number 2012-043 shall continue in full force, subject to the changes herein.

**Recitals**

- 2) The second recital of By-Law 2012-043, which reads “the Council of the Municipality of Middlesex Centre deems it expedient to establish and adopt a policy with respect to the sale or other disposition of land” is hereby deleted in its entirety and replaced by the following two recitals:

“AND WHEREAS Land is unique and is not a good or a service;

AND WHEREAS This By-law is enacted to further the following principles when the Municipality engages in the sale and disposition of Land:

- a. Adequate forethought and information gathering;
- b. Consistency and due process;
- c. Transparency and accountability; and
- d. Flexibility and responsiveness.”

**Definitions**

- 3) The definitions of By-law 2012-43 are hereby amended and re-alphabetized as set out below. The definitions of By-law 2012-043 now read:
  - (a) “**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;
  - (b) “**Chief Administrative Officer**” means the Chief Administrative Officer of the Municipality;
  - (c) “**Clerk**” means the Clerk of the Municipality;
  - (d) “**Council**” means the Council of the Municipality;
  - (e) “**Land**” means any right, title, interest or estate the Municipality 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 Council or of one of the Committees of Council open to the public;
- (g) **“Municipality”** means the Municipality of Middlesex Centre;
- (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 provided to the public and regular subscribers such that in the opinion of the Clerk in his/her sole discretion, has such circulation in the Municipality which provides for reasonable notice of a potential sale of Land.

Despite the definition above, if in the event it is the opinion of the Clerk, in his/her sole discretion, that there is no printed publication being produced of sufficient circulation which provides news of current events of general interest that is able to provide reasonable notice of a potential sale of Land due to newspapers having moved on-line, the Clerk may determine that in his/her opinion, an on-line version of a newspaper generally accessible to the public which provides publications consisting in great part of news of current events of general interest at intervals of not longer than a week has sufficient availability in the Municipality such that publication of a notice in such on-line newspaper provides for reasonable notice of a potential sale of Land. Where such determination is made by the Clerk and the Municipality publishes a notice of a proposed Sale of Surplus Land on an on-line version of a newspaper, such publication shall be deemed to meet the definition of Newspaper under By-law 2012-04, as amended.

- (i) **“Request for Proposals”** or **“RFP”** means the public posting of a process for obtaining responses from respondents to be awarded the exclusive ability to negotiate entry into a potential Agreement of Purchase and Sale with the Municipality with respect to Land, the determination of which is based on ‘best value’, derived from certain mandatory requirements and set of value based criteria identified and evaluated as set out in the respective RFP document;
- (j) **“Sale”** means the sale or other disposition of Surplus Land by the Municipality and includes the granting of an easement, a lease for a term of 21 years or longer and any transaction in which an option to purchase Land is given by the Municipality, whether documented in a stand-alone option agreement or in a lease, regardless of term, or in any other legally binding document; and the words **“Sell”**, **“Selling”**, and **“Sold”** shall have comparable meanings as context requires;
- (k) **“Surplus Land”** means any Land declared surplus under Section 3.1 of By-Law 2012-043; and
- (l) **“Tender”** means the public posting of a process for obtaining bids from bidders to purchase Land (Contract “A” Offer, Contract “B” Acceptance), the determination of which is based on price alone.

## Methods of Potential Sale

- 4) The first four lines of Clause 3.5 of the By-Law 2012-043 are hereby deleted and replaced in their entirety with the following:

“Council shall, in its sole discretion, determine by resolution the method by which the potential Sale of any particular parcel of Surplus Land is to be conducted. The alternative methods are: Sale by Public Tender (not a tender process pursuant to the Municipality’s purchasing policy), Sale by Request for Proposals (not an RFP process pursuant to the Municipality’s Purchasing Policy), Sale by a Real Estate firm or Broker, Direct Sale to a Landowner, or Sale without real estate firm or broker.

## Sale by Public Tender

- 5) Clause 3.5 of By-Law 2012-043 is hereby amended by adding clarification brackets following the heading Sale by Public Tender, “(not a tender process pursuant to the Municipality’s Purchasing Policy)”. The heading now reads: “Sale by Public Tender (not a tender process pursuant to the Municipality’s Purchasing Policy)”.
- 6) Clauses 3.5(c), (d) and (e) of By-law 2012-043 under the Sale by Public Tender method are hereby deleted and replaced by the following in clause 3.5 under the Sale by Public Tender (not a tender process pursuant to the Municipality’s Purchasing Policy) method:
  - (c) Following the notice published in accordance with clause 3.4(a) and Council resolution conferring a potential Sale method in accordance with clause 3.5, the Municipality shall publish an advertisement of the potential Sale at least once in a Newspaper, which provides notice that: a Tender will be posted online; the dates and location of an anticipated online posting; and a statement confirming that a copy of the Tender posting may also be obtained by contacting the Clerk of Municipality and attending at the Municipal office;
  - (d) Following the Newspaper advertisement identified in Tender procedure (c) above, the Municipality shall post the Tender document on a website accessible in every Province in Canada where land is able to be advertised for sale. The Municipality shall cause a link to the Tender posting location to be included on the Municipality’s website; and
  - (e) The Tender document shall set out the minimum mandatory requirements for bidders to provide compliant bids for the Tender process, including without limitation, the means and form by which bids shall be delivered and the deadline for receipt of bids.

## Sale by Public Request for Proposal

- 7) Clause 3.5 of the By-Law 2012-043 is hereby amended by inserting, following the “Sale by Public Tender (not a tender process pursuant to the Municipality’s Purchasing Policy)” method of potential Sale heading and prior to the “Sale by Real Estate Firm or Broker” method of potential Sale heading, a Sale by Public Request for Proposals method of potential Sale, including a heading and associated procedural applications. The heading and procedural applications of the Public Request for Proposals method read as follows:

Sale by Request for Proposal (not an RFP process pursuant to the Municipality’s Purchasing Policy)

Should Council determine that it may potentially Sell Surplus Land through the Request for Proposal method, the following shall apply:

- (a) Costs incurred or anticipated from the potential Sale of the Surplus Land, such as legal fees, survey fees, Appraisal fees, encumbrances, advertising, and improvements, shall be established;
- (b) The RFP document shall set out the minimum mandatory requirements for a respondent to provide a compliant submission for the RFP process, including without limitation, the means by which submission shall be delivered, the deadline to make the submission, and the requirement for any submission to include a RFP Response Form;
- (c) The RFP document shall identify value based criteria and set out in an evaluation methodology how RFP responding submissions will be evaluated;
- (d) One of the value based criteria identified in the RFP document shall be highest price. An estimated proposal price of the Land shall be set out in the RFP document, which shall not be less than the Appraisal value, plus the additional costs referred to in clause (a) above. Notwithstanding the foregoing, Council may accept an amount less than the estimated proposal price. With respect to the value based criteria, the RFP document shall include the following statement:

“The RFP Submission which includes the highest price proposed to paid for the Land or any RFP Submissions at all will not necessarily be accepted by the Municipality”;

- (e) Following the notice published in accordance with clause 3.4(a) and Council resolution conferring a potential Sale method in accordance with clause 3.5, the Municipality shall publish an advertisement of the potential Sale at least once in a Newspaper, which provides notice that: an RFP providing an opportunity to negotiate a potential Agreement of Purchase and Sale with respect to Land will be posted on-line; the dates and location of an anticipated on-line posting; and a statement confirming that individuals may also obtain a copy of the RFP posting by contacting the Clerk of Municipality and attending at the Municipal office;
- (f) Following the Newspaper advertisement identified in RFP procedure (e) above, the Municipality shall post the RFP document, providing the opportunity for potential Sale on a website accessible in every Province in Canada where land is able to be advertised for sale. The Municipality shall cause a link to the RFP posting location to be included on the Municipality’s website;
- (g) The RFP document shall confirm that any “Award” conferred by Council to a successful respondent from the RFP (the Contract “A” offer and Contract “B” award) is limited to providing the successful respondent the opportunity to enter into exclusive negotiations with the Municipality to potentially enter into a potential Agreement of Purchase concerning the Land only and that the opportunity to potentially purchase Property is conditional on:
  - i. Council first resolving to confer upon a respondent to the RFP an Award of having the opportunity to enter into exclusive negotiations to potentially enter into an Agreement of Purchase and Sale concerning the Property;

- ii. A negotiated Agreement of Purchase and Sale being reached and approved at Council at a subsequent Council meeting;
- (h) The RFP document shall include the following statement with respect to the Award of negotiation:

“The Municipality reserves the right to accept or reject any and or all RFP Submissions and/or to cancel this RFP in its entirety either prior to the receipt of RFP Submissions, after the receipt of RFP Submissions, or after declaring an Award without providing reasons, should such be determined by Council to be in its best interest of the Municipality in its sole and absolute discretion. Should only one RFP Submission be received, the Municipality reserves the right to reject it.

The Municipality does not guarantee that any RFP Submission will lead to an Award to exclusively attempt to negotiate a potential Agreement of Purchase and Sale concerning the Land or that any respondent to this RFP who does receive an Award will subsequently succeed in entering into an Agreement of Purchase and Sale approved by Council. In the event an Award is conferred by Council in response to RFP Submissions, the Award is the right to attempt to negotiate a potential Agreement of Purchase and Sale which may or may not be approved by Council.

In the event an Award is conferred by Council to this RFP but the end result of negotiations is not an Agreement of Purchase and Sale approved by Council, the Municipality reserves the right and ability to commence negotiations with the next highest scoring respondents' submission to this RFP.

Regardless of whether or not an Award is conferred by Council pursuant to this RFP and in the event that no Agreement of Purchase and Sale is approved by Council for whatever reason, the respondent in endorsing the RFP Response Form to this RFP does hereby acknowledge that no damages or liability flow from any inability for an Agreement of Purchase and Sale to be reached and does hereby release and hold completely harmless the Municipality, its Mayor, Councillors, officers, directors, employees, legal counsel and agents from any costs, expenses or damages incurred by the respondent in preparing an RFP or negotiating with the Municipality.”;

- (i) All responding submissions to the RFP shall be submitted to Council to declare a potential successful respondent, which if declared, would lead to the negotiation of a potential Agreement of Purchase and Sale; and
- (j) The EOI or RFP document shall include the following statement with respect to the potential cancellation of the RFP process:

“The Municipality reserves the right to not resolve to issue and Award and to reject any and all RFP Submissions. The Municipality reserves the right to cancel this RFP at any time for any reason and the Municipality is under no obligation to provide reasons for cancelation. Should the Municipality exercise its right to cancel this RFP, respondents to this RFP hereby agree that regardless of whether or not an Award is conferred by Council and in the event that no Agreement of Purchase and Sale is approved by Council for whatever reason, no damages or liability flow from the inability for an Agreement of Purchase

and Sale to be reached and does hereby release and hold completely harmless the Municipality, its Mayor, Councillors, officers, directors, employees, legal counsel and agents from any costs, expenses or damages incurred by the Respondent preparing EOI Submissions or negotiating with the Municipality.

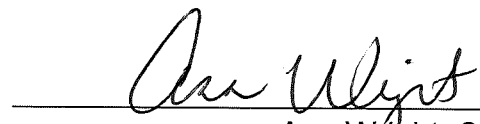
**Sale by Real Estate Firm of Broker**

- 8) The first two lines of Clause 3.5 of the By-Law 2012-043 under the heading of the Sale by Real Estate Firm of Broker are hereby deleted and replaced in their entirety by the following:

“Should Council determine to engage the services of a real estate firm or broker to Sell a particular parcel of Surplus Land, the real estate firm or broker used to provide real estate services shall be determined by the Municipality in accordance with the Municipality’s in force Purchasing Policy, and the following shall apply to a Sale by Real Estate Firm or Broker.”

Passed this 13<sup>th</sup> day of May, 2020.

  
Aina DeViet, Mayor

  
Ann Wright, Clerk

