

Policy for Sale or Disposition of Municipally Owned Land/Property

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During the recent discussion on the transfer of excess road right of way on Marvin Street, the Council asked that a written policy on land sales/transfer/disposition be drafted. The city has acted very consistently over the years with regard to these transaction and I've attempted to articulate the past practice as a policy as best as I can.

To review, the city does not own land unnecessarily or speculatively. It acquires and holds land only to further public purposes. When a parcel is deemed by the City government to be excess or no longer serving a public purpose than it is appropriate to consider conveying that land. City owned parcels come in many different types. They may be individual lots with buildings on them (City Hall, Fire Station, Police Station, etc.), they may be individual lots with no buildings (Berlin Pond), they may be lots with facilities on them like ball fields or parks. City owned property also includes rights of ways for streets and sidewalks, easements for water/sewer lines, small plots of land for pump stations and other unusual configurations for various public infrastructure.

While there may be no current written policy with regard to conveyance of public property, the city's own subdivision regulations establish the standard that the city must meet. Those regulations do not permit the creation of a lot or parcel which is non-conforming. Therefore a full open public bidding, auctioning or offering process cannot occur when a non-conforming parcel is involved. By its very nature, the number of people to whom it can be transferred (essentially the direct abutters) is limited.

Legalities of land transfers: Title 24, Chapter 33, Section 1061 of the Vermont Statutes concerning the Conveyance of Real Estate by Municipalities outlines a procedure for disposition of municipal land. However, subsection 1061 (f) states "*Nothing in this section shall be construed to impair or affect any provisions in a charter of a town or village involving the conveyance of real estate.*"

Title 3, Section 19 of the Charter states: "***Sale of Public Property.*** *The city council may authorize the sale or lease of any real or personal real estate belonging to the city. All conveyances, grants or leases of any real estate owned by the city shall be signed by the mayor and shall be sealed with the city seal.*"

Therefore the Council is clearly authorized to sell or lease real estate belonging to the city and has done so for many years. In the Marvin Street transaction, the Council opted to incorporate a specific public notice provision which is present in the statute but not in the charter.

Exchange of Value: As we have heard from legal counsel in the issues surrounding Berlin Pond, the Council has a fiduciary responsibility to see that appropriate value is obtained from the transfer of city assets. This can be done through a direct cash sale, an exchange of real property or any other transaction in which the council can make a finding of sufficient value. (For example, deeding property to a private non-profit like the Library might be seen as acceptable because the property was continuing use in the public's interest.)

Recommended Policy:

- In all cases, notice should be provided to abutting land owners and a general notice provided to the public detailing the proposed transaction and date of the council meeting when the transaction will be considered.
- Parcels (particularly road right of way) of size and value that do not meet the city's own definition of a conforming lot should be conveyed to the immediate abutter(s) at the discretion of the city council when found to be excess, no longer owned for the public's benefit and/or when the public might benefit from such conveyance. In the event that more than one abutter is eligible to obtain all or part of the property, the city should first attempt to work out an arrangement satisfactory to all eligible land owners. If such an arrangement is not possible, the city should conduct a conveyance offering and process which is restricted to those eligible land owners.
- Parcels that constitute conforming lots, existing buildings or other tangible assets should be offered publicly through an open publicized process for the purpose of creating a public benefit and value in the outcome. The Council should, as much as possible, define the criteria in advance by which the transaction will be made (highest price, best project, highest future tax revenue, most public value, etc).
- The Council should retain the right to waive this practice when determined to be in the best interests of the city. The city's charter is written to grant broad discretion to the Council for a reason, it allows the Council to be flexible when responding to specific circumstances and situations. This determination should be made in advance and announced publicly.