

**THE CORPORATION OF THE TOWN OF KAPUSKASING**

**BY-LAW NO. 4419**

**Being a By-law to establish a Policy and Procedure with respect to the Management and the Sale and Other Disposition of Municipal Land and to repeal By-law Nos. 1646 and 2965.**

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**WHEREAS** Section 270 of the Municipal Act, S.O. 2001, c. 25, as amended, provides that a municipality shall adopt and maintain policies with respect to its sale and other disposition of land;

**AND WHEREAS** the Corporation of the Town of Kapuskasing deems it necessary to adopt an updated policy and procedure with respect to the management, sale, and other disposition of land;

**AND WHEREAS** the Corporation of the Town of Kapuskasing repeal By-Law Nos. 1646 and 2965 along with Policy S5-1 Sale of Municipal Lands (Open Space) and S5-2 Sale of Municipal Lands (Other) and replaces such with this new by-law;

**NOW THEREFORE** the Council of the Corporation of the Town of Kapuskasing does hereby enacts as follows:

**1. Purpose:**

The purpose of this policy is to provide a framework for the overall management of the municipality's land portfolio, which is deemed to include facilities, surface, timber, mineral, and other rights. As such, this policy provides functional guidance for the overall management of the corporate property portfolio including the acquisition of lands required for municipal purposes as well as for the disposal of municipal lands that are surplus to the municipality's present and known future requirements.

**2. Guiding Principles:**

The following principles underlie this Policy:

- 2.1** The municipality has a core responsibility to acquire lands and buildings for its own use for the purposes of developing and maintaining municipal infrastructure and promoting program and service delivery. To this end, the municipality will maintain and update a public inventory of all lands owned and leased by the municipality.
- 2.2** Land assets unrelated to the responsibilities outlined above are, by implication, surplus to the municipality's requirements. Such surplus properties should be sold, or otherwise disposed of, in order to promote economic and social development and to increase the municipality's property assessment base. Despite this principle, future requirements must be acknowledged and hence there may be the need to hold some property in reserve.
- 2.3** The municipality has a further responsibility in terms of acquiring, managing, developing and releasing its land and buildings in a responsible manner on behalf of its residents and ratepayers. In this regard, the key consideration is that the best interests of the municipality (and thus its residents) rather than that of individuals should be paramount in all real estate transactions involving the municipality. This demands that all transactions involving the municipality should realize a maximum benefit to the municipality, its operational requirements, and the broader community.
- 2.4** Lands that are surplus to the needs of the municipality should be disposed of in a predictable and consistent manner at, or near, fair market value, not only to the

general public, but also to other public organizations, unless the public interest demands otherwise. While the private market tends to be solely concerned with maximizing capital gain, the municipality's ultimate focus is to act in the best interests of its citizens. As such, it follows that the municipality will not singularly follow the processes and values of the private market.

- 2.5** It is important that all land transactions of the municipality involving real property (sales, leases, land exchanges, etc.) are conducted in an accountable and transparent manner with a high degree of prudence and control. It is also important for the municipality to balance the interests of accountability and transparency with commercial reality to ensure that entrepreneurial endeavor is not compromised, and that industry is not discouraged from making unsolicited proposals on properties included in the municipal portfolio.
- 2.6** For the purposes of this policy, reference to land is also deemed to include buildings and other facilities. Land subject to this policy also includes lands that have been vested in the Town's name following a failed public sale for tax-registered properties, or lands that are in the process of being vested.
- 2.7** Whereas it is desirable that all existing and future municipally owned land designated Open Space Park (OS) or Environmental Protection (EP) be retained for use by the municipality in order to serve all future needs of the community and that a policy of refraining from disposing of such land be established.

### **3. Definitions:**

- a) "Act" means the Municipal Act, S.O. 2001, c.25, as amended;
- b) "Appraisal" means a written opinion of the market value of the land prepared by a registered member of the Appraisal Institute of Canada, the assessed value as determined by the Municipal Property Assessment Corporation (MPAC), or other person(s) deemed by the Town to be qualified for this purpose identified under this By-law;
- c) "Council" means the Council of the Corporation of the Town of Kapuskasing;
- d) "Community & Planning Department" means the Town's Planning Department.
- e) "Local Board" means a local board as defined in the Municipal Act, S.O. 2001, c.25, as amended;
- f) "Planning Committee" means the Town's Planning Committee.
- g) "Publication" means to make content available to the general public. While specific use of the term may vary among countries, it is usually applied to text, images, or other audio-visual content on any traditional medium, including paper. The word publication means the act of publishing, and also refers to any printed copies.;
- h) "Published" means published in a printed or digital format that, in the opinion of the Clerk, has such circulation within the Town of Kapuskasing as to provide reasonable notice to those affected by, or interested in the land sale;
- i) "Sale" means the sale of land, which includes a lease of 21 years or longer and is also deemed to include surface, mineral, and/or timber interests/rights;
- j) "Surplus Land" means any land or interest/rights owned by the Town of Kapuskasing declared surplus to the needs of the municipality under this by-law; and
- k) "Town" means the Corporation of the Town of Kapuskasing.

### **4. Land Inventory and Categories of Municipal Land Assets:**

The Town's Planning Department is responsible for maintaining a comprehensive

database of all its land portfolio through its Geographic Information System (GIS). The Planning Committee is responsible for reviewing its land portfolio to determine what land is required to be retained for current and future municipal purposes, and what land is not required for municipal purposes. Wherever possible, the Town should be proactive in terms of offering surplus lands for sale to promote economic development and increased property tax assessment. The Town should also acquire needed lands for present and future development, infrastructure and services as required.

The Planning Department is also responsible for administering, tracking and updating a comprehensive database of all leases involving Town lands. Typically, Town-owned properties that are considered for lease are not contemplated for sale as they may be required for municipal purposes in the future or may not be suitable for certain classes of development.

The municipality's land assets are categorized as follows:

**Land Generally Capable of Development on its Own** - This category includes those lands that are zoned to permit, and that can generally accommodate both residential and non-residential uses (i.e., lands that meet all existing zoning by-law and other municipal standards and requirements).

**Land Generally Incapable of Development on its Own** - This classification includes those residential and non-residential lands that do not meet zoning by-law and other municipal standards and requirements and therefore are generally incapable for development on its own (e.g., irregular parcels, undersized parcels, landlocked parcels, roadways, laneways, shoreline allowances, hazard lands, etc.)

## **5. Procedural Policy and Methods of Disposal for Surplus Municipal Land Assets:**

The following subsections provide an overview of the key steps and considerations involved in the disposition of Town owned property.

### **5.1 Declaration of Surplus Lands**

In considering a sale of municipally owned land, the Planning Committee shall conduct an internal circulation using the Real Property Checklist (Schedule B attached hereto) and review to determine if the subject lands are required for municipal purposes or can be considered surplus to the needs of the municipality. The Committee may also circulate its intent to declare certain municipal lands surplus to outside public agencies that may have an interest in the lands for comments.

If a property is deemed to be surplus to the needs of the municipality, the Committee will prepare a report to Council. A property is deemed to be surplus to the needs of the municipality once Council has passed a resolution to this effect.

### **5.2 Establishing Fair Market Value**

Prior to offering any surplus municipal lands for sale, the Planning Committee shall establish the fair market value of the subject lands through one, or more, of the following means at the sole discretion of the Town:

- An independent qualified appraiser who is a registered member in good standing with the Appraisal Institute of Canada;
- An individual, group or agency not registered with the Appraisal Institute of Canada may be utilized to conduct an appraisal based on the circumstances at the discretion of the Town's Planning Committee. Generally, such individuals, groups or agencies may include qualified provincial assessors and independent real estate brokers or agents;
- The latest assessed value as reported by the Municipal Property Assessment Corporation (MPAC);
- Recent sales comparisons associated with similar property transactions; or
- Through a public process, including, a Request for Proposal or a Tender/Auction.

Any appraisals conducted on behalf of the Town shall be considered the property of the Town and generally shall be considered valid for a 24-month period from the date the appraisal was prepared unless Council determines a new appraisal is warranted.

For smaller and irregular properties (4,000 ft<sup>2</sup> or less in area), the Town shall secure a generic appraisal, completed by a qualified appraiser, to determine the value of such properties based on land area ranges. In this case, such appraisals shall be reviewed not less than every 5 years. See Schedule "C" for reference purposes. In addition to the above, the Town may also consider timber, aggregate, and/or mineral resource values in establishing a fair market value for municipally owned lands that are reasonably known to possess such resources. In this regard, the Town's Official Plan Schedule and related Ministry inventory mapping of such resources shall be consulted. However, in doing so, the Town must properly balance economic development opportunities and its desire to maximize capital gain.

Classes of municipal surplus lands that do not require a formal appraisal to determine fair market value include the following:

- Land 0.3 meters (1 foot) or less in width acquired in connection with an approval or decision under the Planning Act;
- A closed highway sold to an owner of land abutting the closed highway;
- Land formerly used for railway lines if sold to an owner of land abutting the former railway land;
- Land that does not have direct access to a highway if sold to the owner of land abutting that land;
- Land repurchased by an owner in accordance with Section 42 of the Expropriations Act;
- Land sold under Sections 107, 108, and 110 of the Municipal Act;
- Land sold under the Municipal Tax Sales Act;
- Easements granted to public utilities or to telephone companies;
- Land sold to public bodies including a municipality, local board (including a school board and a conservation authority), and the Crown in right of Ontario or Canada and their agencies; and
- Land to be used for the establishment and carrying out of industries, industrial operations and incidental uses or other uses that are deemed to be in the public interest.

### 5.3 Methods of Disposal of Municipal Surplus Lands

Generally, surplus lands may be disposed of in any one of the following ways:

1. **Request for Proposals (RFP)** - The RFP process is intended to be used most frequently for the public sale of large and/or significant and/or unique higher profile properties.
2. **Public Tender/Auction** - The public tender/auction option is the most frequently employed technique to sell more routine surplus municipal property. This approach involves a municipally initiated process where municipal lands are offered for sale/lease to the general public through a formal and open public process requiring the submission of sealed competitive bids.
3. **Direct Sale** - Direct sales may take place when unsolicited proposals or offers for municipal lands are presented to the municipality for consideration without the municipality first advertising an RFP or public tender/auction for the subject lands. Under such circumstances, the municipality may negotiate a direct sale with the proponent, or the municipality may choose to proceed with a formal public process to solicit more competitive bids for the lands in question. Generally, direct sales will be considered in cases where there is an obvious direct benefit or value to the Town from an economic development perspective that would be in the best interest of the public (e.g., a mining company requires abutting lands from the Town in order to expand an existing mining operation

or where an investor wishes to establish a use to satisfy a demonstrated gap/need in the community).

4. **Land Exchange** - Land exchanges involving a reciprocal transfer of parcels held by the municipality for other parcels, which generally hold a higher public value. Such trades will generally be negotiated privately.
5. **Listing with a Real Estate Broker or Other Agent** - The Town may deem it appropriate to secure the services of a real estate broker or other qualified agent to assist with the marketing and sale of surplus municipal property. In such cases, the Town will undertake a competitive public process to select a preferred service provider.

#### 5.4 Disposal of Surplus Municipal Land by Category

In terms of the various categories of municipal land assets, the municipality will dispose of surplus lands in the following manner:

1. **Land Generally Capable of Development on its Own** - The disposition of surplus municipal lands in this category may take place by any of the land disposal methods listed under Section 5.3.
2. **Land Generally Incapable of Development on its Own** - Generally, the preferred approach for dealing with such transactions is by way of restricted public tender/auction involving an abutting landowner(s). However, a direct sale/lease to a particular landowner(s) may be more appropriate in cases where the resulting transaction(s) would bring a particular abutting property into compliance with municipal standards (e.g., a sale that would provide sufficient road frontage to a property that does not meet the current minimum zoning requirement), where the direct sale would support an existing business operation, or in cases where municipal roadways and laneways are closed and offered for sale to abutting property owners.

#### 5.5 Other Policies Respecting the Sale of Surplus Municipal Property

In cases where the municipality elects to proceed with a public Request for Proposal (RFP) or Public Tender/Auction or listing with a Real Estate Broker or Other Agent, or other public offering, the Town should ensure that appropriate wording be included in such public notices and related documents that "the highest or any offer may not necessarily be accepted." In addition, the Town should utilize approved and standardized Request for Proposal (RFP) and Sale by Public Tender/Auction documents for the advertising of the sale of surplus municipal property.

In addition, for surplus properties that have more significant development implications, the Town may require prospective purchasers to submit a deposit of up to 20% of the value of their respective offers. The purpose of the deposit is to ensure that the successful purchaser satisfies all conditions of the sale. Failing to do so may result in the purchaser forfeiting the deposit to the Town for compensation. In cases where all conditions of sale are deemed complete by the Town, the deposit will be returned to the purchaser.

In instances where written request for Open Space Park (OS) or Environmental Protection (EP) zoned municipal lands is received by Council the following procedures shall be followed:

1. Proposal for land disposition is advertised indicating that objections to the disposition are to be forwarded in writing to Council within 14 days.
2. Circulation of Notice to all property owners within 400 feet of the land that is considered for disposition, with objections to be forwarded to Council within 14 days.
3. Following consideration of objections, a 75% vote of all members of Council to dispose of any of the proposed land is required.
4. Council declares by means of resolution property as surplus.
5. At least one appraisal of the fair market value of the property is obtained.
6. Notice to public of proposed sale shall be given at least 10 days prior to disposal

of property by posting on subject property or other location chosen by Clerk.

7. Council may direct that notice to the public be given by means of publication.

8. Purchaser is responsible for all costs incurred or required to dispose of real property including but not limited to legal, survey, appraisal, advertising, improvements and administrative fees.

## **5.6 Receipt, Evaluation and Negotiation of Purchase Offers**

Purchase offers for surplus municipal property shall be reviewed and evaluated by the Town's Planning Committee. The Town reserves the right to negotiate sales, development, and other agreements with any proponent (with the exception of the tendering process).

Appraisals or other means used to establish a fair market value for surplus municipal lands are to be used as a guide only and Council may ultimately decide to accept offers of purchase that are below, at, or above such established values or may decide not to accept any offers.

The Town also reserves the right to recover certain costs relating to the sale of surplus municipal lands from a proponent. These costs include, but are not limited to, the appraisal, topographical and legal surveys, title searches, notice and legal costs, and general administration costs unless such costs are waived in writing within the provisions of an offer to purchase.

## **5.7 Acceptance of Offer and Certificate of Compliance**

All offers of purchase and sale must be approved by Council by Resolution or By-law. For conditional offers, an agreement of purchase and sale will be entered into between the Town and the proponent following the authorizing by-law being passed.

The Town's solicitor will be responsible for all legal work associated with the sale/purchase of Town land including the preparation of an invoice outlining the breakdown of the purchase price and any related transaction particulars including, but not limited to, HST on the sales price, land transfer tax, appraisal, lands & titles registration, survey, public notice, and administrative charges.

The Town's solicitor will also be responsible for reviewing the legal documents and the invoice of costs when meeting with the purchaser for document execution. All costs associated with the real estate transaction are to be paid in full "in Trust" to the Town's solicitor prior to registration.

A certificate of compliance for the sale of real property will be issued by the Clerk of the municipality verifying that to the best of his or her knowledge the requirements of the Municipal Act and this By-law, which apply to the sale of land, have been complied with.

## **6.0 Accountability, Transparency & Public Notice Requirements:**

It is important that any and all land transactions involving municipal property be conducted in an accountable and transparent manner to the public and in accordance with the Municipality's Accountability and Transparency Policy, as amended.

To achieve public accountability and transparency, this policy sets out a consistent and public process for the disposition of Town land. Generally, this process is very similar as it relates to both public and direct land dispositions.

For land to be offered for sale, Council, in a meeting open to the public, shall first consider a report with recommendations by the Town's Planning Committee, which is supported by the Chief Administrative Officer, to declare land surplus to the needs and requirements of the municipality and offer the land for sale.

Once the property has been declared surplus and Council has authorized the sale of the Town land by public notice, the notice of the sale must be posted on the Town's website and/or social media for 2 consecutive weeks and advertised in the local newspaper, if any, for 2 consecutive weeks (once every week) and a 'For Sale' sign placed on the property (for public land sales only). In the case of on-site signage, its contents should include the Town logo, Lot & Plan Number (legal description), contact number (telephone, e-mail or both) and shall remain in place for a minimum of 2 weeks.

Notice should include a statement confirming that the Town declares the land to be surplus, a brief description of the proposed the land sale, a legal description, municipal address and/or key map which in the opinion of the Clerk is sufficient to identify the lands to be sold, an indication of the fair market value (if applicable), when and where information pertaining to the land sale will be available for public viewing, and the name and contact information of the person handling the land sale.

The notice shall serve as a means to invite purchase offers for surplus municipal property in the case of a public sale and also offer the opportunity for public comments / concerns with respect to the proposed sale of Town owned property. Any public comments/concerns will be presented to Council prior to the passing of the Resolution or By-law for the sale of any Town owned land. Such notice is intended to invite a public tendering process (in the case of public land disposition competitions) but also to consider arguments in support of, or in opposition to, the proposed transfer. Additional notice, including publication in newspapers, website, or other mediums, which provide coverage beyond the geographic area of the Town of Kapuskasing shall be at the discretion of the Town. The Town may also circulate such notices to other jurisdictions, including utility companies, for review and comment.

Should any submissions or concerns be received from the public, such comments shall be directed to the Clerk and considered by Council during an open public meeting and prior to the resolution or by-law authorizing the sale being passed. In addition, municipal lands may be disposed of, but only after Council, in a meeting open to the public, has considered a report with recommendations by the Town's Planning Committee, which is supported by the Chief Administrative Officer.

The Minutes of the Opening of Proposals will also be made available to Town Council prior to a Resolution or By-law authorizing the sale of land being passed.

## **7. Additional Policies:**

### **7.1 Municipal Tax Sales Rule**

Land sold under the Municipal Tax Sales Rule set out under Ontario Regulation 181/03 and forming part of the Municipal Act, 2001, c.25 shall include any lands vested in the municipality by the registration of a Notice of vesting pursuant to the Municipal Tax Sales Rules, and such lands may be sold by the municipality within 1 year from the date of registration of the Notice of vesting without an appraisal by direct sale, request for proposal or tender without declaring the lands surplus or giving additional notice from that of the tax registration advertising.

#### **7.1.1 Tax Sale Vesting**

It is important to establish guidelines with respect to the management of (failed) unsuccessful municipal tax properties in order to provide an equitable and advantageous method to restore underutilized properties and potentially contaminated properties to productive tax generating uses in our municipality.

**Legislation** The main legislative provisions relating to the vesting of unsuccessful tax sale properties are set out below:

- The Municipal Act provides a two-year period for municipalities to make a decision to vest a property in the name of the municipality after an unsuccessful tax sale.
- The Environmental Protection Act provides a five-year period of limited protection from environmental orders for municipalities that vest contaminated property as a result of tax sale proceedings.

Should the Planning Committee not recommend vesting, Council would have three options to consider:

- 1) To write-off a portion of the arrears deemed uncollectible and re-advertise at a lower amount to attract bids.
- 2) Re-advertise with no change in amounts owing.
- 3) Immediately remove the tax arrears certificate without waiting the two years.

Should the Planning Committee recommend vesting, a thorough review/inspection of the property should be first undertaken by relevant Departments and associated consultants (if required) to identify possible deficiencies (tenants, property standards, liens on title, etc.) and to also include an environmental pre-screening process where past contamination is suspected. Standardized guidelines may be developed in order to help implement such review processes before vesting is contemplated. Consultation with appropriate professionals may also be required.

## **7.2 Road/Lane Allowance Closures and Sale**

In considering a sale of the whole or part of a highway, street, laneway or shoreline allowance, the Town's Planning Committee shall firstly, circulate the request to all abutting landowners for comment, shall post notice of the sale on the Town's website and/or social media for 2 consecutive weeks and advertise in the local newspaper, if any, for 2 consecutive weeks (once every week), circulate the notice to utility companies, including Town's Sewer/Water section, for comment, prepare a report including recommendations, and a resolution or by-law for Council's consideration.

Generally, the selling price for the disposal of the whole or part of highways, streets, laneways or shoreline allowances offered to abutting owners will be based on the generic appraisal for smaller and irregular parcels of land as described in Section 5.2.

A highway, street, or shore allowance deemed to meet building lot specifications under the Town's zoning by-law (or a parcel that is capable of development on its own) shall be disposed of in accordance with Section 5 of this policy.

## **7.3 Sale of Timber Rights**

When considering a request to sell the timber rights only, the Town may require the entering into of an agreement with a purchaser to address reforestation and buffering requirements. The agreement may also be registered on title.

The reforestation component would ensure, among other matters, that adequate replanting occurs within a reasonable time frame following the harvesting of timber, the monitoring of plantings, and the reinstatement of failed plantings. The reforestation component will follow accepted forestry practices and may be peer reviewed at the purchaser's cost.

The buffer component will be applicable adjacent to municipal roadways, water bodies (including rivers, streams or creeks) for aesthetic, environmental and safety purposes. The buffer is to be continuous and maintain a minimum width of 30 m (100 ft), as per the Municipal Tree Canopy Policy (2019). The implementation of such a buffer will help to maintain the aesthetic value of the subject property for travelers and other users, will help to protect the integrity of water bodies, and will provide for an effective wind block to minimize snow drifting and associated hazards along roadways.

## **7.4 Mineral/Aggregate Exploration**

Any proponent interested in performing exploration work on municipally owned lands



shall provide a minimum of 1-week prior written notice of their intention to conduct such work to the Clerk. The Town shall also require that the proponent agree to reinstate the affected municipal property to the conditions existing prior to the exploration work taking place and to provide adequate general liability insurance coverage in the amount of \$5 million and to include the Town as co-insured. A copy of proof of insurance coverage shall also be provided to the Town by the proponent.

### **7.5 Land Drainage & Alteration**

For the sale or other disposition of Town land, the Town's By-law relating to By-law No 1629, as amended (establishment of a general policy on the grading of lots and block and regulating the drainage on and from such lots), shall apply and notice of this by-law shall be provided to prospective purchasers as part of the sales process.

### **7.6 Municipal Land Asset Accounts**

The revenues and expenditures associated with all land sales and acquisitions shall be directed to, or taken from, the Town's Sale of Land Reserve. The purpose of this reserve is to develop and service Town-owned lands so that they can be sold for residential, commercial, or industrial purposes as well as acquiring lands for future municipal purposes. The purchase, servicing, and/or maintenance of land for non-development purposes (such as parks or municipal infrastructure) are intended to be funded by other means and other Departments.

### **8. Effective Date of By-law:**

This By-law shall come into force and effect upon the date of its final passage.

### **9. Repeal of Existing By-law:**

That By-law Nos. 1646 and 2965, and any amendments thereto, are hereby repealed, and

That Policies S5-1 Sale of Municipal Lands (Open Space) and S5-2 Sale of Municipal Lands (Other) be repealed.

**READ A FIRST AND SECOND TIME THIS 26<sup>TH</sup> DAY OF APRIL 2021**

**READ A THIRD TIME AND ENACTED THIS 10<sup>th</sup> DAY OF MAY 2021**

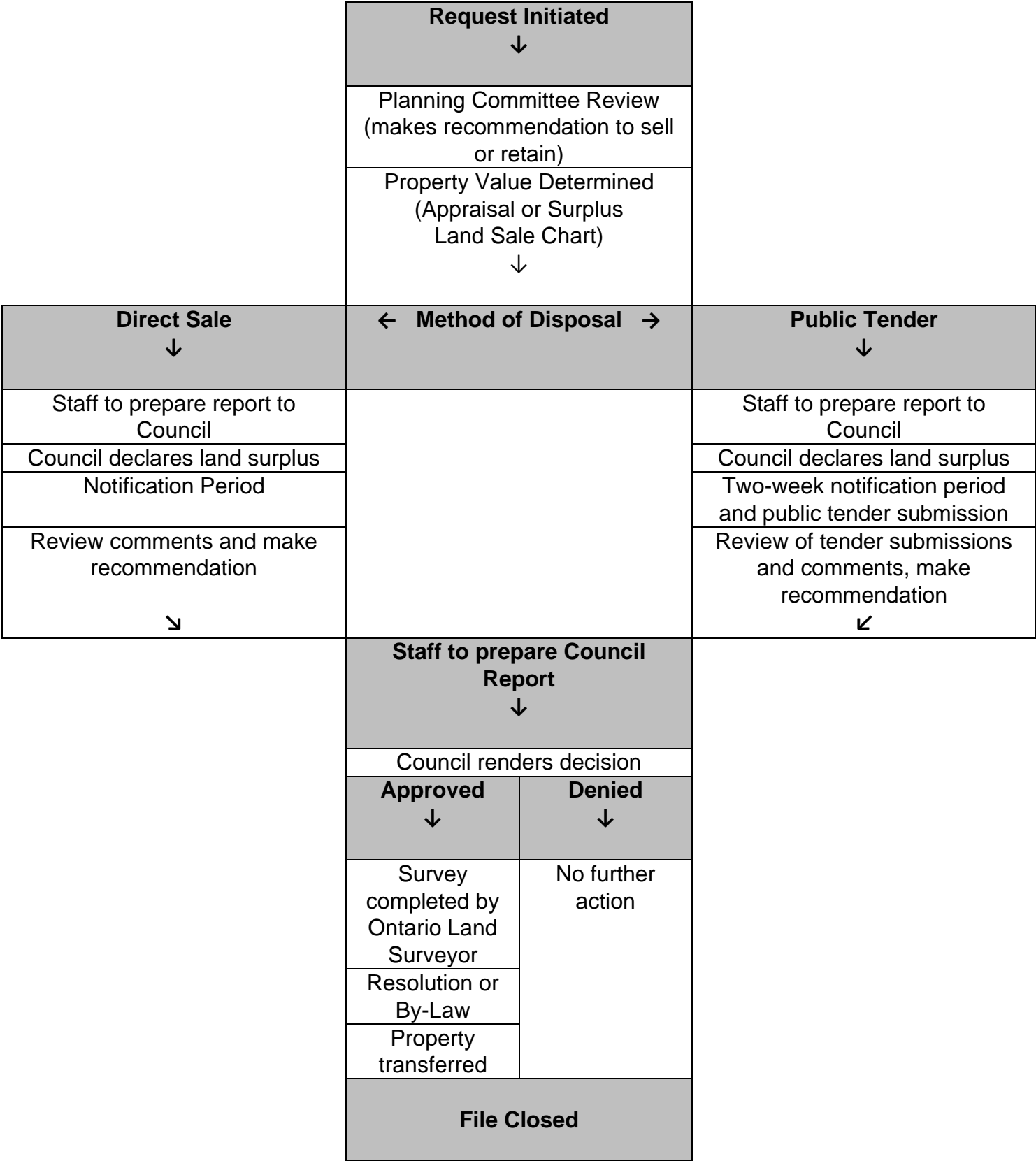
**UNDER THE SEAL OF THE CORPORATION OF THE TOWN OF KAPUSKASING.**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk



**Schedule “A” Sale of Land Process**



## SCHEDULE "B"

### Real Property Checklist

<b>DEPARTMENT</b>	<b>DESCRIPTION</b>	<b>SIGNATURE</b>	<b>DATE</b>
Planning	Land Use Designation – Official Plan:  Permitted Uses – Zoning By-Law:  Land Use Constraints – Provincial Policy Statements:		
Public Works	Water Services:  Sewer Services:  Drainage:  Utilities (hydro, gas, telephone):  Storm Services:  Private System/Infrastructure:  Ground Contamination:		
Clerk	Easements:  Leases:		
Treasurer	Outstanding Taxes:  Liens:		
Other	Other relevant information:		

**Schedule “C”**  
**Surplus Vacant Land Appraisal Values**

<b>Square Footage of Subject Land</b> <i>(Laneways, Roadways, Land Locked, and  Unserviced for an abutting property)</i>	<b>Amount to be Charged</b> <i>(when no appraisal done within a valid 12-  month period of a similar appraisal)</i> <b>Price per sq. ft.</b>
0-15,000 sq. ft.	\$ xxx per sq. ft.
15,001 – 50,000 sq. ft.	\$ xxx per sq. ft.
50,001 + sq. ft.	\$ xxx per sq. ft.
Fair market values to be reviewed annually based on appraisals	
Appraisal values will be valid for a 12-month period from the date stamped on the appraisal document.	
The municipality reserves the right to consider and evaluate each request based on the guiding principles and procedures of this by-law.	