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Town of Cape Elizabeth

Land-Real Estate Acquisition/Disposition Policy

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I. Introduction

This ~~p~~Policy describes the process for the Town of Cape Elizabeth (the "Town") to utilize when making decisions ~~are considered~~ for the acquisition or disposition of real estateproperty by the Town. As used in this Policy, the term "real estate" includes an easement over real estate and any other property rights or ownership interest less than fee simple ownership of the real estate.

II. Property-Real Estate Acquisition ~~of Parcels and/or Easements~~

A. Gifts

1. The Town ~~of Cape Elizabeth~~ is occasionally offered gifts of real estateparcels and/or easements through the subdivision process or otherwise. It is the desire of the Town Council to evaluate each proposed gift based on consistent criteria.
2. The Town Council is inclined to accept gifts of real estateparcels or easements in any of the following instances:
 - a) An expressed community purpose or use has been identified.
 - b) The gift-real estate is in an area with little open space, woods, etc.
 - c) The site-real estate is listed as significant in the Town's visual resources study.

- d) The ~~site-real estate~~ is on the greenbelt plan or could be an alternative greenbelt site.
- e) The ~~site-real estate~~ could serve as a buffer for an adjacent municipal use or for the expansion of a Town use.

3. The Town Council is inclined to not accept ~~gifts of real estate~~~~parcels or easements~~ in any of the following instances:

- a) The ~~parcel or easement~~ real estate is unusable.
- b) A significant liability exists on the ~~parcel or easement~~ real estate.
- c) The tax loss resulting from removing the real estate from the property tax base is significant as contrasted to the non-economic value of the parcel or easement to the community.
- d) ~~The acceptance would have a significant deleterious effect on adjacent parcels that would outweigh any public benefit.~~

4. Every offer to gift real estate should be reviewed by the Town Council at the earliest possible date. Comments shall be sought from appropriate Town bodies and staff on each proposed gift.

B. Municipal Purchase

The Town ~~of Cape Elizabeth~~ at times purchases ~~land or easements~~ real estate through the use of municipal or other funds. Any such purchases are at the discretion of the Town Council. Discussion or consideration of the acquisition of ~~land and/or easements~~ real estate may be conducted in executive session if premature disclosures of information would prejudice the competitive or bargaining position of the Town ~~of Cape Elizabeth~~.

C. Foreclosure

~~Property-Real estate~~ acquisition through foreclosure is governed by applicable Maine statutes. The ~~town~~ shall obtain casualty insurance coverage for real estate~~insure any property~~ with structures acquired through foreclosure.

D. Eminent Domain

~~Property-Real estate~~ acquisition through eminent domain is governed by applicable Maine statutes. The Town shall obtain casualty insurance coverage for real estate~~insure any property~~ with structures acquired through eminent domain .

III. Property-Real Estate Disposition Policy

A. Foreclosed ~~Vacant Land~~ Real Estate and Residential ~~Property~~ Real Estate

1. It should be the expectation of every Cape Elizabeth property owner that the Town will pursue its full rights and responsibilities under Title 36 M.R.S.A. to collect all real estate taxes, personal property taxes and sewer fees due to the Town. Occasionally, real estate taxes and sewer fees may remain unpaid after all proper notices and deadlines have been met under Title 36 M.R.S.A.
2. In the event of an automatic ~~property real estate~~ foreclosure under Title 36 M.R.S.A., the former owner of the ~~property real estate~~ ~~is welcome to~~ may submit to the Town a conditional offer of payment of all past-due taxes, interest, fees and insurance amounts due for the ~~property real estate~~. Town staff will hold the “offer” of funds solely in a custodial capacity until the Town Council reviews the offer.
3. The individual making the offer of payment should have no expectation that the Town Council will automatically accept it. Every foreclosure will be decided at the full discretion of the Town Council on a case by case basis. No action that the Town Council ~~shall~~ takes on a previous foreclosure shall be considered as establishing a precedent for a future decision.
4. The Town will only entertain offers of payment that are sufficient to fully pay meeting the taxes, interest, fees and insurance liability from the owner of record immediately prior to the ~~property real estate~~ foreclosure.
5. The Town reserves the right to sell any ~~property real estate~~ foreclosed upon at any time following the foreclosure. No sale proceeds shall accrue to the previous owner of record. Any sale of ~~property real estate~~ to any party other than the previous owner shall be done only by sealed bid and only after the Town Council shall have authorized the bid process. Before the Town Council may authorize a sealed bid process, the requirements of sub-paragraphs a), b) and c) of this paragraph 5 shall be satisfied. Prior to any bid process, the following process shall occur:
 - a) The ~~T~~ town ~~C~~ ouncil shall refer the potential sale to the Conservation Commission for its recommendation and to the Town Manager, who shall survey all municipal departments, the School Department and the Portland Water District for recommendations. The Conservation Commission shall have up to 45 calendar days to make a recommendation to the Town Council. The Town Council may not commence the bid process until the 45 day period has lapsed. Recommendations from staff, the Portland Water District and the Conservation Commission are not binding on the Town Council.
 - b) Notices shall ~~also~~ be sent to all immediate abutters of the ~~property real estate~~ to inform them that the process for potential disposition ~~is beginning~~ has begun. Notice of the sealed bid process shall be given to all abutters by regular mail.

~~b) The Conservation Commission shall have up to 45 calendar days to make a recommendation to the Town Council. The Council may not commence the bid process until the 45 day period has lapsed.~~

~~e) Recommendations from staff, the Portland Water District and the Conservation Commission are not binding on the Town Council.~~

~~c~~d) Following a successful confirmation of title to the foreclosed ~~parcel~~real estate, the Town Council shall schedule and hold a public hearing on the potential disposition of the parcel-real estate with the same noticeing requirements as areis then in place for zoning variances. The Town Council shall also have a site visit prior to the public hearing.

~~e) Only after all of III A. 5 a) through III A. 5 d) shall be completed including the completion of the public hearing shall a sealed bid process commence~~

~~d~~f) Notice of the sealed bid process shall be given to all abutters by regular ~~mail~~. The bid process ~~will also~~shall be advertised on the municipal website and in a newspaper that has general circulation in Cape Elizabeth. Bids shall be available to be submitted for at least 14 days from the date of first publication in the newspaper of general circulation. The Town Council shall always reserve the right to accept or reject any or all bids.

B. Foreclosed Commercial ~~Properties~~Real Estate

1. For all commercial real estate on which the period of redemption of tax mortgage has expired ~~after August 1, 1992~~, the Town Council shall direct the Town Attorney to undertake an action to quiet title pursuant to 36 M.R.S.A. ~~§~~§946.
2. “Commercial Real Estate” shall be defined, for the purpose of this policy, as any parcel of land with any buildings thereon which, as of the date of the expiration of the period of redemption, is not used by the owner as his or her primary residence, is not used predominantly for agricultural purposes and is not a single family residence.
3. Following a successful confirmation of title ~~to the foreclosed upon commercial real estate~~, the Town Council shall direct the Town Manager and Town Attorney to sell ~~said the~~the commercial real estate at a public auction.
4. The public auction procedures and terms of sale shall be as follows:
 - a) The Town Attorney shall publish notice of the ~~foreclosure~~ auction once a week for three (3) weeks in the Portland Press Herald, or ~~such an~~another newspaper having a general circulation in Cumberland County.

- b) The sale shall be by public auction conducted by the Town Attorney. The auction shall take place at the Town Hall or on the premises of the tax-acquired ~~property~~real estate, at the Town Manager's discretion.
- c) Bids will be received from those present at the public auction who present an earnest money down payment, in an amount to be determined by the Town Manager, in the form of cash or certified funds. In the event a bid is accepted by the Town Manager, the earnest money down payment of the highest bidder shall be nonrefundable. All earnest money down payments of unsuccessful bidders shall be returned.
- d) The Town Manager shall retain the right to accept, conditionally accept, or reject any and all bids submitted, and shall cause the same disclaimer to be noted in any public notice of ~~said the~~ auction.
- e) The Town Manager shall not accept any bid for a dollar amount less than total outstanding taxes, including a just value for current taxes not assessed, liens, interest and all costs related to the quiet title action and sale, including, but not limited to, ~~attorneys fees incurred for quieting title and conducting the public auction,~~ publication costs, ~~and~~ insurance costs and attorney's fees incurred for quieting title, conducting the public auction and concluding the sale. Notwithstanding the preceding sentence, the Town Manager may accept a lesser amount subject to the approval of the Town Council.
- f) In the event a bid is accepted, or conditionally accepted, at the public auction, a Purchase and Sale Agreement, prepared by the Town Attorney, shall be entered into between the Town and the successful bidder. A closing shall take place within thirty (30) days of final acceptance of a bid.
- g) The Town Council shall convey any ~~property~~real estate sold at a public auction by Quitclaim Deed only.
- h) The purchaser of any tax--acquired ~~property~~real estate sold at public auction shall be responsible for the removal of any and all occupants of ~~said property~~the real estate and shall, in writing, forever indemnify and hold harmless the Town from any and all claims arising out of the sale of the tax-acquired property brought by the occupants of the purchased ~~property~~real estate, their personal representatives, successors, heirs or assigns.
- i) The purchaser shall purchase the tax-acquired ~~property~~real estate and any improvements thereon on an "aAs is" "where is" basis. The Town and its agents and employees shall make no representations or warranties of

any kind, express or implied, including, but not limited to the warranties of fitness, habitability, merchantability, satisfaction of building requirements or use for any particular purpose or otherwise, all of which shall be ~~expressly and hereby are~~ disclaimed in the quitclaim deed.

- j) The public auction shall be subject to any additional terms and conditions of sale, which the Town Attorney may reasonably require.

~~For all commercial real estate on the period of redemption of a tax mortgage has expired prior to August 1, 1992, the same procedures for disposition as set forth shall be followed except that the prior owner of the tax-acquired property may redeem the property prior to December 31, 1992, upon payment of all past due and current taxes, interest and all costs, including, but not limited to, any attorneys fees incurred. After December 31, 1992, the Town Council shall direct the Town Attorney to undertake an action to quiet title pursuant to Title 36 M.R.S.A. §946 and to otherwise proceed with the public auction of the tax-acquired property. Furthermore, after December 31, 1992, said prior owner of commercial real estate acquired by the Town by virtue of the expiration period of redemption of a tax mortgage, which expired prior to August 1, 1992, shall have no further rights of redemption.~~

C. Other ~~Parcels~~-Real Estate

1. The Town may sell other ~~properties-real estate~~ by sealed bid and only after the Town Council shall have authorized the bid process. ~~Before the Town Council may authorize a sealed bid process, the requirements of sub-paragraphs a), b) and c) of this paragraph 1 shall be satisfied. Prior to any bid process, the following process shall occur:~~

a) The Town Council shall refer the potential sale to the Conservation Commission ~~for its recommendation~~ and to the Town Manager, who shall survey all municipal departments, the School Department and the Portland Water District ~~for recommendations~~. ~~The Conservation Commission shall have up to 45 calendar days to make a recommendation to the Town Council. The Town Council may not commence the bid process until the 45 day period has lapsed. Recommendations from staff, the Portland Water District and the Conservation Commission are not binding on the Town Council.~~

b) Notices shall ~~also~~ be sent to all immediate abutters of the ~~property-real estate~~ to inform them that the process for potential disposition ~~is beginning~~ has begun. Notice of the sealed bid process shall be given to all abutters by regular mail.

~~b) The Conservation Commission shall have up to 45 calendar days to make a recommendation to the Town Council. The Council may not commence the bid process until the 45 day period has lapsed.~~

~~e) Recommendations from staff, the Portland Water District and the conservation commission are not binding on the Town Council.~~

~~ce) Following a successful confirmation of title, the Town Council shall schedule and hold a public hearing on the potential disposition of the parcel real estate with the same noticeing requirements as areis then in place for zoning variances. The Town Council shall also have a site visit prior to the public hearing.~~

~~e) Only after all of III C. 1a) through III C. 1d) shall be completed, including the completion of the public hearing, shall a sealed bid process commence.~~

~~df) Notice of the sealed bid process shall be given to all abutters by regular mail. The bid process will also shall be advertised on the municipal website and in a newspaper that has general circulation in Cape Elizabeth. Bids shall be available to be submitted for at least 14 days from the date of first publication in the newspaper of general circulation. The Town Council shall always reserves the right to accept or reject any or all bids.~~

IV. Use of Proceeds

A. From ~~Property or Property Rights~~ Real Estate Acquired through Foreclosure

1. Proceeds shall first be applied to meet the tax obligation of the ~~property-real estate~~ including all taxes, interests and costs, then to meet the costs of the sale of the ~~property-real estate~~ including attorney's fees, appraisal and survey costs, registry fees, any broker commissions and other costs specifically related to the sale of the ~~property real estate~~.
2. Any net proceeds in excess of the above costs shall be equally divided between the Land Acquisition Fund and the General Fund.

B. From ~~Property or Property Rights~~ Real Estate Acquired other than through Foreclosure.

1. Proceeds shall first be applied to meet the costs of the sale of the ~~property-real estate~~ including attorney's fees, appraisal and survey costs, registry fees, any broker commissions and other costs specifically related to the sale of the ~~propertyreal estate~~.
2. Any net proceeds in excess of the above costs shall be equally divided between the Land Acquisition Fund and the General Fund.

C. From Property-Real Estate with Improved Structure when Successor Structure will be Constructed

1. Whenever any property-real estate is sold with an improved structure and the Town is building a successor replacement structure on other land, the proceeds shall first be applied to meet the costs of the sale of the property-real estate including attorney's fees, appraisal and survey costs, registry fees, any broker commissions and other costs specifically related to the sale of the property-real estate.
2. Any net proceeds in excess of the above costs shall be used 100% for the acquisition of land-real estate and for construction of the successor structure.