

**Town of Cape Elizabeth  
Real Estate Acquisition/Disposition Policy  
Adopted July 11, 2005**

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**I. Introduction**

This Policy describes the process for the Town of Cape Elizabeth (the “Town”) to utilize when making decisions for the acquisition or disposition of real estate 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. Real Estate Acquisition**

**A. Gifts**

1. The Town is occasionally offered gifts of real estate 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 estate in any of the following instances:
  - a) An expressed community purpose or use has been identified.
  - b) The real estate is in an area with little open space, woods, etc.
  - c) The real estate is listed as significant in the Town’s visual resources study.
  - d) The real estate is on the greenbelt plan or could be an alternative greenbelt site.
  - e) The 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 in any of the following instances:
  - a) The real estate is unusable.
  - b) A significant liability exists on the 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.
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 at times purchases 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 real estate may be conducted in executive session if premature disclosures of information would prejudice the competitive or bargaining position of the Town.

## **C. Foreclosure**

Real estate acquisition through foreclosure is governed by applicable Maine statutes. The Town shall obtain casualty insurance coverage for real estate with structures acquired through foreclosure.

## **D. Eminent Domain**

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

## **III. Real Estate Disposition**

### **A. Foreclosed Vacant Real Estate and Residential 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 real estate foreclosure under Title 36 M.R.S.A., the former owner of the real estate may submit to the Town a conditional offer of payment of all past-due taxes, interest, fees and insurance amounts due for the 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 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 the taxes, interest, fees and insurance liability from the owner of record immediately prior to the real estate foreclosure.
5. The Town reserves the right to sell any real estate foreclosed upon at any time following the foreclosure. No sale proceeds shall accrue to the previous owner of record. Any sale of 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.
  - 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 be sent to all immediate abutters of the real estate to inform them that the process for potential disposition has begun. Notice of the sealed bid process shall be given to all abutters by regular mail.
  - c) Following a successful confirmation of title to the foreclosed real estate, the Town Council shall schedule and hold a public hearing on the potential disposition of the real estate with the same notice requirements as are then in place for zoning variances. The Town Council shall also have a site visit prior to the public hearing.
  - d) The bid process 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 30 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 Real Estate**

1. For all commercial real estate on which the period of redemption of tax mortgage has expired, 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, the Town Council shall direct the Town Manager and Town Attorney to sell 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 auction once a week for three (3) weeks in the Portland Press Herald, or 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 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 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 publication costs, 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 real estate sold at a public auction by Quitclaim Deed only.
- h) The purchaser of any tax-acquired real estate sold at public auction shall be responsible for the removal of any and all occupants of 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 real estate, their personal representatives, successors, heirs or assigns.
- i) The purchaser shall purchase the tax-acquired real estate and any improvements thereon on an “as 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 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.

### **C. Other Real Estate**

1. The Town may sell other 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.
  - 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 be sent to all immediate abutters of the real estate to inform them that the process for potential disposition has begun. Notice of the sealed bid process shall be given to all abutters by regular mail.

- c) Following a successful confirmation of title, the Town Council shall schedule and hold a public hearing on the potential disposition of the real estate with the same notice requirements as are then in place for zoning variances. The Town Council shall also have a site visit prior to the public hearing.
- d) The bid process 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 30 days from the date of first publication in the newspaper of general circulation. The Town Council reserves the right to accept or reject any or all bids.

#### **IV. Use of Proceeds**

##### **A. From Real Estate Acquired through Foreclosure**

1. Proceeds shall first be applied to meet the tax obligation of the real estate including all taxes, interests and costs, then to meet the costs of the sale of the 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 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 Real Estate Acquired other than through Foreclosure.**

1. Proceeds shall first be applied to meet the costs of the sale of the 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 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.

##### **C. From Real Estate with Improved Structure when Successor Structure will be Constructed**

1. Whenever any 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 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 real estate.
2. Any net proceeds in excess of the above costs shall be used 100% for the acquisition of real estate and for construction of the successor structure.