



STAFF REPORT
Public Hearing 12-5-17

AGENDA ITEM #: 17-156
COUNCIL MTG. OF: November 21, 2017
FROM: Dave Caron, Town Administrator
OFFERED BY: Administration
PREPARED BY: Administration
SUBJECT: Revisions to Chapter V, Article V of the Municipal Code, Disposition of Town Property

INTRODUCTION:

To amend Chapter V, Article V of the Municipal Code, Disposition of Town Property in order to streamline operations and to provide the Council will additional flexibility as the Town becomes more involved with economic development initiatives.

TOWN ADMINISTRATOR COMMENTS

The Council is encouraged to schedule a public hearing on this matter for December 5, 2017 and adopt Ordinance #2017-007 after receiving public input.

BACKGROUND

The current ordinance treats the disposal of property equally regardless of how the property was acquired. There are specific state statutes which set forth the manner by which properties can be sold after being acquired by tax deed; properties which are purchased and later sold for economic development purposes; and a general statute dealing with all other properties. The current ordinance is cumbersome and does not provide the Town with the necessary flexibility to advance economic development projects. Finally, the current ordinance contains timelines which are inconsistent with state statutes.

DISCUSSION

The purpose of the amendment is to introduce further efficiencies into Town operations and to clarify the methods to be used when disposing of certain types of properties.

FISCAL IMPACT

N/A

RECOMMENDED ACTION BY COUNCIL & MOTION

Staff recommends that the Town Council approve the attached revisions after receiving public input on December 5, by adopting Ordinance #2007-007.

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ARTICLE V
Acquisition and Disposition of Town Real Estate Property
[Added 7-6-2004]

§ 5-27. General provisions.

These provisions shall apply to all Town-owned real estate property. Specific requirements for the acquisition and disposition of tax deeded parcels are governed by New Hampshire RSA 80:1 et seq., are herein incorporated. Further, any property acquired, developed, or disposed of pursuant to RSA 162-G, Acquisition, Development and Disposal of Industrial Land and Facilities, or RSA 162-K, Tax Increment Finance District, shall be done in accordance with the applicable statute, which is also incorporated herein. All other property shall be disposed of in accordance with RSA 41:14-a, which has been adopted pursuant to RSA 41:14-c, and is herein incorporated. It is the intent of these procedures to provide an orderly process for disposition of real property to be included in revenues for each budget year.

- A. On an annual basis the Assessor's office shall generate an updated map/maps indicating all Town-owned parcels. These maps shall be available to the Town Administrator no later than July 1 of each year. A master file of Town land shall be prepared and submitted to the Town Administrator for review and recommendation to the Town Council for disposition.
- B. Once Town land is catalogued in the master file, a description of the property shall then be transmitted by the Town Administrator to all interested Town departments, boards and committees for their review and recommendation. In all cases the Planning Board, Conservation Commission, and Heritage Commission shall be notified, and their recommendation requested as to retaining the property for Town use.
- C. Individuals interested in purchasing a parcel of Town-owned land may submit a request to the Town Administrator at any time during the year. If a request is received, the Council, at its discretion, may hold a session to consider the request. However, no disposition will be permitted without public hearing, if required by the applicable statute.
- D. Nothing in these provisions shall prevent a citizen from petitioning the Town for sale of Town-owned land under the Town Charter, Section 3.1 (A).
- E. Town property to be considered for sale shall be maintained in a master file in the Town Administrator's office, and made available to the public.
- F. The provisions of this section shall not apply to the sale of and the Council shall have no authority to sell:
 - (1) Town-owned conservation land which is managed and controlled by the Conservation Commission under the provisions of NH RSA 36-A.
 - (2) Any part of a Town forest established under NH RSA 31:110 and managed under NH RSA 31:112.
 - (3) Any real estate that has been given, devised, or bequeathed to the Town for charitable or community purposes.
 - (4) Any real estate otherwise prohibited from being sold by federal or state law.

§ 5-28. Procedure prior to sale of properties.

- A. The Town shall conform to the procedure set forth in the applicable statutes incorporated herein prior to the sale of any Town owned property.
- B. The motion to place the real property up for sale shall include any special conditions of sale, including if it is being sold to a specific individual(s) or by bid, auction, or unsolicited proposal.
- C. Upon voting to sell properties acquired through tax lien, and/or tax deed, the Council shall vote to either sell these parcels by public auction or sealed bids.

§ 5-29. Procedure at time of sale.

- A. The sale of Town property, including those acquired through the tax deeding process, shall adhere to the following procedures in addition to those set forth in the applicable statutes.
- B. The Town Administrator shall request proposals from qualified real property auctioneers, or licensed real estate agents for the management and conduct of the sale of Town-owned properties.
- C. The date and time of the public auction, or the last date for receipt of sealed bids, shall be posted at the Municipal Center and shall be advertised in a newspaper of general circulation in the Town at least seven days prior to the date of the auction or the last date for the receipt of sealed bids. All properties to be sold shall be identified by address, tax map, and lot numbers.
- D. Prior to the public hearing, the Town shall post, on any property which is being considered for sale that has street frontage, a "For Sale" sign. Such sign shall be legible from the street and shall contain a telephone number or web address to be contacted to gain additional information about the Town land and the procedures to be followed in the sale of Town land.
- E. The Town Council, or its designee, may require either a cash deposit or treasurer's check in an amount equal to 10% of the sale price. The successful bidder shall submit the balance within 45 days of the sale unless an extended time period is agreed to in writing by both the Town and the bidder. The Town Council, or its designee, shall establish a date by which the property transfer from the Town to the successful bidder must be completed. If the transaction is not completed by this date, the deposit will be retained by the Town as liquidated damages.
- F. The successful bidder shall be responsible for all fees incurred by the Town relative to transfer of the property. These fees shall include, but not be limited to, legal fees, survey costs, subdivision costs and registry fees.

§ 5-30. Guidelines to be followed by Town.

- A. It shall be the intent of the Town of Derry, through its Town Council, to return all parcels acquired through the tax deeding process back into the tax rolls of the Town except where the Town's best interest would be served by retaining a specific parcel of real estate.
- B. Examples of circumstances where the Town is better served by retaining a particular piece of property include, but are not limited to, the following:
 - (1) Land which is suitable for conservation or historic purposes. In cases where these lots are sold, the Council shall give serious consideration to attaching a conservation or historic easement to the property prior to sale rather than retaining it in Town ownership.

- (2) Land which is suitable for active public recreation that is considered part of the Parks and Recreation Master Plan.
 - (3) Parcels of land where retention in public ownership may be considered in the best interest of public health and welfare, such as watershed protection, or future septic field development.
 - (4) Land that provides rights-of-way for access to ponds and other bodies of water.
 - (5) Land required for other public rights-of-way for utility use, or capital projects included in the adopted Capital Improvement Plan.
 - (6) Land which aligns with the Town's economic development goals.
- C. Notwithstanding any of the above guidelines, the Town Council is hereby authorized to dispose of tax deeded properties under the provisions of NH RSA 80:80 as "justice may require." Examples of instances where "justice may require" may include, but not be limited to, the following:
- (1) Where the Town commits an error in the actual deeding process such as notification problems; or
 - (2) Where the owner of the property shows clear intention of redeeming the properties prior to deeding, but due to unique circumstances is unable to do so. It shall be the intent of the Town of Derry to adhere to the provisions' of RSA 80:88 and RSA 80:89, or any amendment thereto, with regard to the distribution of proceeds from the sale of tax-deeded property and the notice to formerowner and opportunity for repurchase where applicable.

§ 5-31. Adoption.

These provisions shall be construed to be the official guidelines for the disposition of Town real estate property of the Town of Derry, and have been adopted by the Town Council on this sixth day of July, 2004, as amended on the fifth day of December, 2017..

§ 5-32. Amendments

These provisions may be amended from time to time by the Town Council provided the proposed changes are considered in accordance with the provisions of Article 6 of the Town Charter, or as may be required by the applicable statute.