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**Subject:** Disposition Strategy for Lands Previously Declared Surplus

**Report to:** Corporate Services Committee

**Report date:** Wednesday, February 12, 2020

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## Recommendations

That Report CSD 13-2020 **BE RECEIVED** for information.

## Key Facts

- This report informs Council on the current status of the 22.26 acres of vacant Niagara Region owned industrial lands located at 401A Lakeshore Road and 14 Broadway Avenue in St. Catharines which were declared surplus in the October 18, 2017 Report CSD 66-2017 (Appendix '1')
- The Lands identified in Appendix 1 are three individual parcels under the following PIN's which are currently zoned as E2 – General Employment.
  - Parcel 'A' – PIN #463010393 (18.472 ac)
  - Parcel 'B' - PIN# 463010391 (1.84 ac)
  - Parcel 'C' - PIN # 463010210 (1.95 ac)
- Council authorized Staff to proceed with the disposal of the property in accordance with both report CSD 66-2017 (Appendix '1') and Planning and Economic Development Committee Confidential Report ED 13-2017 the latter of which also considered the sale of a portion (10.75 acres) of Parcel 'A' to a named Development Proponent. (Confidential Memo CSC-C 3-2020 – Appendix '1')
- Despite the concerted effort of Regional Staff to facilitate the sale of this portion of parcel 'A', an Agreement of Purchase and Sale was never finalized due to the unresponsiveness of named Development Proponent and as such, the sale of this portion of the Lands is no longer a viable alternative.
- With due consideration of alternative options for the disposal or retention of the Lands, Staff will proceed with the disposal in accordance with Disposal of Land By-law 26-2011 Section 23(d) which seeks to engage "a Real Estate Multiple Listing Service where the Land will be listed with a local Real Estate Board or Broker."
- In a separate unrelated matter pertaining to the properties, on November 11, 2019 Niagara Region was contacted by the Ministry of Economic Development Job Creation and Trade's FDI Services Branch with a confidential Request for Information and

these lands have been identified to the Province for Foreign Direct Investment (FDI) opportunity. (ref: Alternative Section)

## Financial Considerations

The Finance Section (32 and 33) of the Disposal of Land By-law 26-2011 requires that once the land is no longer being utilized for the purpose for which it was acquired, the Land will be declared surplus, sold or otherwise utilized by the Region.

The Appraisal Section (9) of the Disposition of Land By-law requires that where the surplus Land has an estimated Market Value in excess of \$50,000, at least one independent appraisal of the Market Value shall be obtained. On July 27, 2019, Niagara Region received Antec Appraisal Group's appraisal of the vacant Niagara Regional industrial land located at 401A Lakeshore Road and 14 Broadway Avenue in St. Catharines. Fair Market Value based on highest and best use are depicted in Table 1.

### FAIR MARKET VALUE (Table 1)

Parcel	PIN	Acreage	Fair Market Value
A	463010393	18.472	\$2,760,000
B	463010391	1.84	\$460,000
C	463010210	1.95	\$490,000
<b>Total appraised value of all parcels</b>			<b>\$3,710,000</b>

The dispositioning (sale) of the subject property by Niagara Region in accordance with By-law 26-2011 could generate revenue, at aforementioned Fair Market Rates.

Table 2 depicts the costs incurred by Niagara Region in 2017 which were directly related to facilitating the due diligence requirements associated with the portion (10.75 acres) of Parcel 'A' to a named Development Proponent. While Staff acknowledge and endorse these measures and their associated costs on any property being considered for disposal, it should be noted that these expenses came at the request of the Named Development Proponent during their initial discussions with Regional Staff. Regrettably, given the time which has passed coupled with the sale never being completed; the reports produced are now stale dated and their costs are essentially non-recoverable.

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**REGIONAL EXPENSES INCURRED SINCE 2017 (Table 2)**

<b>Time</b>	<b>Expense</b>	<b>Cost</b>
July 2017	Appraisal Report	\$9,100.00
November 2017	Due Diligence	\$35,137.00
November 2017	GPR Investigation	\$3,413.00
April 2019	R-Plan preparation	\$3,000.00
Aug 2019	Appraisal Report	\$3,800.00
<b>Total Expenses Incurred Since 2017</b>		<b>\$54,450.00</b>

The Finance Section (35) of the Disposition of Land By-law requires that in any instance where the Land is being sold; pursuant to the execution of any ensuing Agreement for Purchase and Sale (APS) and the closing date for the sale, the net proceeds less of costs associated with the disposal of the Surplus Property shall be credited to the designated capital reserve account.

### **Analysis**

The Lands as further described in Report CSD 66-2017 (Appendix '1'), consists of three Vacant Industrial parcels totalling approximately 22.26 acres which are currently zoned as E2-General Employment. The report also provides additional context of any encumbrances which are currently in effect on the property including a .296 acre area easement being granted in favour of St. Lawrence Seaway Commission

On Oct 18, 2017, Council ratified a motion declaring this property surplus and authorized Staff to proceed with its disposal in accordance with both report CSD 66-2017 (Appendix '1') and Planning and Economic Development Committee Confidential Report ED 13-2017 the latter of which also considered the sale of a portion (10.75 acres) of Parcel 'A' to a named Development Proponent. (Confidential Memo CSC-C 3-2020 – Appendix '1')

Staff (with Council approval – recommendation #3 of CSD 66-2017) were also provided the autonomy to undertake a divestiture approach to the public that considered factors other than price, specifically the sale process should consider economic development factors such as employment and investment.

Pursuant to Council ratification, Niagara Region scheduled and participated in multiple meetings with the named Development Proponent, however an Agreement of Purchase and Sale was never finalized due to their unresponsiveness. On March 29, 2019, Niagara Region issued correspondence requesting that the named Development Proponent provide written affirmation of their intention to acquire that portion of the property by no later than April 26, 2019. On June 21, 2019 Niagara Region issued a 2<sup>nd</sup> notification to the named Development Proponent advising that to date, Niagara Region had not

received any such written correspondence confirming their intention to acquire the property. As stated in the March 29<sup>th</sup> letter, Niagara Region would now move forward with consideration of alternative options for the disposal or retention of the properties at 401A Lakeshore Road and that the disposition of Lands would be undertaken in accordance with the Region's Disposal of Land By-law 26-2011.

Staff are providing this report both to inform Council that the proposed sale of a Portion (10.75 acres) of Parcel 'A' to a named Development Proponent is no longer a viable alternative and to outline the Disposition Strategy which will be followed going forward. In accordance with the Method of Sale Section (23) of the Disposition of Land By-law 26-2011, the Director, Procurement & Strategic Acquisitions (Manager) has determined that the most appropriate method for the sale of surplus property by way of engaging a Real Estate Multiple Listing Service to list the land with local Real Estate Board or Broker {Section 23(d)}. Staff intend to proceed with an open and formal procurement process to solicit bids from Realty Services Providers culminating in an award to Lowest Commissioned compliant bid Real Estate Broker who will be contractually engaged via a listing agreement to undertake and oversee the marketing and facilitation of the sale of all subject lands.

Noting that the Commissioner of Corporate Services has been authorized to negotiate the terms and execute Agreements of Purchase and Sale, conditional upon final approval by Regional Council; and Staff will report back to Corporate Services Committee and Council for approval of the sale, once an acceptable Agreement of Purchase of Sale has been received for the Surplus Property.

### **Alternatives Reviewed**

With reference to recommendation #3 of CSD 66-2017 Council provided Staff with the autonomy to undertake a divestiture approach to the public that considered factors other than price, specifically that the sale process should consider economic development factors such as employment and investment.

Additionally with reference to the Financial Feasibility and Maximum Profitability sections of the appraisal which stated:

- "The subject has significant road frontage and could easily be subdivided into smaller parcels via a Plan of Subdivision."
- "The parcel at 401A Lakeshore Road could easily be divided into multiple 1 to 3 acre parcels."
- "Based on the previous criteria, the maximum return to the land would be generated by developing the properties with industrial use."
- The appraisal report identifies the maximum return to the land would be generated by developing the properties with an industrial use."

Niagara Region could (with Council approval) endeavour to undertaking a formal procurement process to solicit bids from potential Development Proponents who could would solicit market interest in potentially maximize the value of the land and long term benefits of employment and economic development.

On November 11, 2018 the Niagara Region was contacted by the Ministry of Economic Development Job Creation and Trade's FDI Services Branch with a confidential Request for Information. (Confidential Memo CSC-C 3-2020 – Appendix '2') The FDI Services Branch had been contacted by a foreign company that that was in the initial phases of the site selection process to find a suitable site for a bio manufacturing investment. Niagara Economic Development was requested to share the site selection criteria with the local area municipalities and other community partners in order to generate a shortlist of properties that would be provided to the FDI Services Branch. At this time Niagara Economic Development was informed that Niagara was in competition with other jurisdictions across Canada and the United States.

During the site review process the Regionally-owned property located 401A Lakeshore Road was identified as meeting the Ministry's requested criteria. After a meeting with Corporate Services it was determined that Niagara Economic Development would submit 401A Lakeshore, along with other short-listed properties, in response to the Ministry's RFI request. This process will help staff have a better understanding of what investors are looking for in terms of employment lands and the processes required to successfully divest the property.

### **Relationship to Council Strategic Priorities**

While Procurement & Strategic Acquisitions and its related activities align with many of Council's 2019-2022 Strategic Priorities, this Report best aligns with Sustainable and Engaging Government, specifically objective 4.1: High Quality, Efficient and Coordinate Core Services which promote an organizational culture that values continuous improvement, collaboration, and innovation.

### **Other Pertinent Reports**

- Corporate Services Committee Report CSD 66-2017
- Confidential Planning and Economic Development Committee Report ED 13-2017
- Confidential Memo CSC-C 3-2020

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**Prepared by:**

Bart Menage, CSCMP, CRM  
Director, Procurement & SA  
Corporate Services

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**Recommended by:**

Todd, Harrison, CPA, CMA  
Commissioner/Treasurer  
Corporate Services

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**Submitted by:**

Ron Tripp, P.Eng.  
Acting, Chief Administrative Officer

*This report was prepared in consultation with Frank Fucile, Real Estate Officer and Ken Scholtens, Manager, Business Development & Expedited Services*

**Appendices**

Appendix 1

CSD 66-2017 Proposed Disposition of Land  
in the City of St. Catharines

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**Subject:** CSD 66-2017 - Proposed Disposition of Lands in the City of St. Catharines

**Report to:** Corporate Services Committee

**Report date:** Wednesday, October 18, 2017

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## **Recommendations**

1. That the Regional owned lands legally described as Lots 31, 32 & 34, Corporation Plan 5 more particularly described as Part 6 on Reference plan 30R-7563 in the City of St. Catharines (the “Surplus Property”) and shown on Appendix ‘I’ attached hereto, **BE DECLARED** surplus to the Region’s needs;
2. That staff **BE AUTHORIZED** to proceed with the disposal of the Surplus Property in accordance with the Region’s Disposal of Land By-law 26-2011;
3. Council **APPROVES** that staff undertake a divestiture approach to the public that considers factors other than price, specifically the sales process should consider economic development factors such as employment and investment.
4. That staff **BE AUTHORIZED** to create a development plan for the property to ensure that the property can attract further investment in order to maximize economic development.
5. That the Acting Commissioner of Enterprise Resource Management Services **BE AUTHORIZED** to negotiate the terms and execute Agreements of Purchase and Sale, conditional upon final approval by Regional Council; and
6. That staff **BE DIRECTED** to report back to Corporate Services Committee and Council for approval of the sale, once an acceptable Agreement of Purchase and Sale has been received for the Surplus Property.

## **Key Facts**

- The subject land shown on Appendix ‘I’ are three parcels of land which total approximately 22.26 acres and are currently zoned E2 – General Employment. The land was initially acquired in 2003 & 2005 for the intended use of wastewater treatment facility. The lands are identified as three individual properties under the following PIN’s;

- Parcel 'A' – 463010393 (18.472 ac)
  - Parcel 'B' - 463010391 ( 1.84 ac)
  - Parcel 'C' - 463010210 ( 1.95 ac)
7. The land represents a significant portion of the City of St. Catharines remaining developable employment land.
8. The property is subject to a previously Council approved sale of approximately 10.75 acres. This previous instruction was outlined in the Planning and Economic Development Committee Confidential report ED 13-2017.
- The severance of would therefore be considered and disposed of as described;
    - 10.75 acres to be disposed of as per the Planning and Economic Development Committee Confidential report ED 13-2017. The exact nature and location of this land is currently still subject to negotiation.
    - 7.72 acres to be declared surplus and disposed of in accordance with the Region's Disposal of Land By-law 26-2011,
    - The actual location of the severance on Parcel 'A' will be in accordance to allow existing facilities (Water/Waste Water) within the area of Seaway Haulage Road to service the subject lands after severance has occurred.
  - The whole of Parcel 'A' is currently under a lease agreement – File (08) L.04.087 with Meyers Fruit Farms Inc.
    - The current lease term is March 1, 2016 to February 28, 2021
    - The annual compensation is \$5,720+HST
    - Section 12.2 (Rights to Termination) – “...the Landlord or the Tenant may terminate this lease without cause by giving six (6) months written notice of such termination to the other.”
  - Staff will provide appropriate notice to the tenant prior to the sales process, and will work with the tenant to assist in mitigation efforts.
  - Parcel 'B' (14 Broadway Ave) is currently vacant land
  - Parcel 'C' is currently vacant land.
  - This report is seeking approval to declare all of the property surplus and dispose of the Surplus Property, all in accordance with the Region's Disposal of Surplus Land By-law 26-2011. As noted a portion of the land was directed to be disposed previously by Council.
  - Staff have circulated the property to departments of the region and no internal requirement was identified.
  - Staff have also circulated the property to Boards and Agencies, the City of St. Catharines, School Boards and the Provincial and Federal governments and no interest has been expressed;



## Financial Considerations

- In accordance with the Region's Disposal of Land By-law 26-2011 (section 9), the subject lands have undergone a Fair Market Value Appraisal to determine the highest and best use of the property.
- The costs associated with the disposal of the Surplus Property will be offset by the proceeds of the sale of the property. The lands have been appraised by D.J. Penwarden Appraisals Ltd., and the Fair Market Value are identified as;
  - Parcel 'A' – 463010393 (18.472 ac) = \$2,450,000 (\$132,633/acre)
  - Parcel 'B' - 463010391 ( 1.84 ac) = \$ 455,000 (\$247,956/acre)
  - Parcel 'C' - 463010210 ( 1.95 ac) = \$ 490,000 (\$251,540/acre)
- The above appraisal had some scope limitations, as more investigation is made into the land and its conditions certain aspects of the valuation may require adjustment.
- A portion of Parcel 'A' to be considered and disposed of in accordance with Planning and Economic Development Committee Confidential Report ED 13-2017.
- The sale and disposition of all remaining subject lands will be in accordance with section 23 of the Region's Disposal of Land By-law 26-2011 to determine the most appropriate method of Sale of surplus Land to the public.
- With the approval of Council as required by section 21 of the Region's Disposal of Land By-law 26-2011, staff will undertake a process that will consider net proceeds along with economic development criteria.

The Net Sales Proceeds will be credited to Surplus Properties.

## Analysis

The Surplus Property consists of three Vacant Industrial land properties further identified in Appendix 'I'. The three parcels of land total approximately 22.26 acres and are currently zoned E2 – General Employment. In accordance with the Region's Disposal of Land By-law 26-2011, the subject lands have undergone a Fair Market Value Appraisal to determine the highest and best use of the property.

Planning and Economic Development Committee Confidential Report ED 13-2017 outlines a proposed investment for 10.75 acres of Parcel 'A'.

The sale and disposition of all remaining subject lands will be in accordance with section 23 of the Region's Disposal of Land By-law 26-2011 which will allow the Region to maximize the value of the land and long term benefits of employment and economic development.

During the circulation process in accordance with the Region's Disposal of Land By-law 26-2011 no interest was expressed in the purchase of Surplus lands from the Provincial or Federal governments, however the St. Lawrence Seaway will be granted an Easement for an existing Dry Dock Discharge Culvert which occupies the south west portion of Parcel 'A' (Appendix '2'). The encumbrance could pose land development concerns pending an encroachment agreement from SLS to the property owner and/or any further site plan requirements from the City of St. Catharines. Parcel 'A' (Appendix '2') is also currently encumbered by an easement registered for Gas in 1960.

No interest was expressed in the Surplus lands from the Public and/or Service Users

Notice of the Region's intent to declare the property as Surplus Land and the intention to dispose of the Surplus Land will have been posted on the Region's website no less than 14 days prior to the meeting in which the Corporate Services Committee considers this report.

It is proposed that the lands be declared surplus by the Region and disposed of in accordance with the Region's Disposal of Land By-law 26-2011.

Due to the size and nature of the property and the previous direction to sell 10.75 acres, staff is required to undertake a plan in order to ensure that the property as a whole can be properly serviced and developed. Initial review has identified certain limitations related to water, sewer, and gas servicing.

Staff will report back to Corporate Services Committee and Council for approval of the sale, once an acceptable Agreement of Purchase of Sale has been received for the Surplus Property.

## **Alternatives Reviewed**

The alternative of not declaring the property surplus would not align with the strategic goals of encouraging investment and growth in the Region.

## **Relationship to Council Strategic Priorities**

This supports Council's strategic priority of "Investment, Innovation and Entrepreneurship".

## **Other Pertinent Reports**

Planning and Economic Development Committee Report ED 13-2017

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**Prepared by:**

Bart Menage  
Director, Procurement & Strategic  
Acquisitions  
Enterprise Resource Management  
Services

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**Recommended by:**

Jason Burgess  
Acting Commissioner of Enterprise  
Resource Management Services  
Enterprise Resource Management  
Services

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**Submitted by:**

Carmelo D'Angelo, BSc, MPA  
Chief Administrative Officer

*This report was prepared in consultation with Frank Fucile, Real Estate Officer.*

**Appendices**

Appendix I – Surplus Property  
Appendix 2 – Property Encumbrances

## Appendix 'I' – Surplus Property



## Appendix '2' – Property Encumbrances



- Approximate location of the St. Lawrence Seaway Dry Dock Discharge Culvert
- Approximate dimensions:
  - Width (2.44m) x Height (2.9m) chamber
  - Depth (approximately 40' - to be verified by survey)
- SLS has verified this culvert is active and is an important part of the dry dock operations
- Culvert chamber is pending survey to determine actual location on Parcel 'A'

- Property location subject to Gas Easement from 1960