

CITY OF LAINGSBURG  
DISPOSITION OF CITY-OWNED REAL PROPERTY

BACKGROUND

The city of Laingsburg is or may become the owner of real property which is used for various municipal purposes, including land-banking. As public service needs change, the requirements for these properties may be revised, and on occasion, certain parcels may be found greater than the city's current need. This requires review of the site's potential for future public use and its potential economic benefit to the city.

PURPOSE

It is the purpose of this policy to:

- A. Establish a procedure by which unused or marginally used city-owned real estate is reviewed for its potential public use and for designating unneeded parcels for lease or sale; and
- B. Provide guidance for the auction, negotiated sale, or exchange of city-owned real estate; and
- C. Establish the conditions under which city-owned real property may be leased.

POLICY

It is the city's policy to manage its real estate assets so that they may properly carry out municipal needs which rely on these assets. It is not the city's policy to speculate in real estate. The city council may review all city-owned real estate not adequately used for municipal purposes and determine the appropriate use of the property. Those properties needed for municipal purposes may be so designated. If a property is not needed for public use within the foreseeable future, it may be made available for lease or sale, or if it will be needed at a future time, it may be suitable for lease in the interim. Those properties not required for municipal use, including those acquired because the owner failed to pay taxes, or designated for lease may be designated for sale or reserved to be exchanged for other land the city needs. The city may evaluate the sale price or lease rent from city-owned real estate based on relevant factors including:

- A. An appraisal of the property which is no more than six months old at the time the sales agreement is presented to the city council, the City reserves the right to authorize the use of a licensed appraiser to determine actual value or ask the City Assessor to prepare an appraisal.
- B. Prevailing economic conditions and recent applicable trends, and
- C. Any special benefits to accrue from the sale or lease.

Discounts will not be negotiated unless an extraordinary need or circumstance is recognized by city council resolution before negotiation, setting forth the amount of the discount and the justification for it. The purpose of this is to demonstrate to the community that the city is not making a gift of public assets.

## PROCEDURE

### A. Real estate review

All unused and marginally used city-owned real estate may be reviewed on an as needed basis to determine public facility needs and to implement the comprehensive plan on a timely basis. The following procedure will apply:

1. Review by appropriate city departments.
2. Review by any applicable city commission(s).
3. Review by the planning commission for consistency with the comprehensive plan and environmental impact.
4. The staff's recommendation and relevant comments along with those of the planning commission are submitted to the city council.
5. The city council then determines the designation to be applied to the property (e.g., public facility, open space, surplus, sale, or lease).

### B. Comprehensive plan and rezoning.

Before marketing a parcel, staff will review the parcel for likely changes in density or intensity of use since the city acquired the property. If such changes are likely, then staff shall initiate a necessary rezoning and comprehensive plan amendment through the planning commission to enable marketing the property at its highest and best use. When different land-use classifications divide projects, staff will seek lot splits, lot mergers, or property-line adjustments to divide the property along use lines, to reserve rights-of-way for streets and utilities, and to be able to disclose the terms of development of the property.

### C. Lease versus sale

City-owned real property not required for municipal uses may be designated for lease or sale using criteria listed below. At the time staff recommends whether the property should be sold, leased, or reserved for exchange purposes, council shall be provided with an appropriate analysis of the alternatives.

### D. Options for Sale of Real Estate

#### 1. Auction

Land which is readily marketable and unrestricted in its sale potential may be sold to the highest bidder at a public auction by either oral or sealed bid, provided that the highest bid equals or exceeds the minimum published price established by the city before bid opening, which price shall not be lower than the amount shown on the appraisal. Notice of the sale by bid shall be published in a newspaper of general circulation at least ten days before bid opening. If sealed bids are requested, a deposit must accompany each bid in the form of certified or cashiers' check made payable to the city in an amount equal to at least 10 percent of the bid amount. After sealed bids are opened, oral bids are permitted from bidders who can meet the 10 percent deposit requirement. The initial oral bid must be at least 5 percent higher than highest sealed bid. Subsequent oral bids must be in increments of not less than

\$100.00. If the person whose bid is accepted fails to pay the total bid price within 60 days from acceptance of bid, the bidder's deposit is forfeited, and at the sole option of this city, property may be offered for sale to the next highest bidder on the same terms as granted the high bidder. The council shall be notified of bids received or, if applicable, the fact that no bids had been received. The council may reject any and all bids.

The minimum acceptable bid will usually be the appraised fair market value as determined by the city assessor or an independent Member of Appraisal Institute (MAI) appraiser. The intent of this procedure is to set a minimum bid which will ensure a fair return to the city for its property, while encouraging maximum participation in the bidding process.

The city council may determine that property should be developed in a specific manner and may issue a request for competitive proposals (RFP) based upon pre-established criteria, in which case the property would not be sold at auction but sold through public advertising and the solicitation of proposals which will be publicly examined. See appendix A.

## 2. Negotiated sales

If the property is to be developed in a manner that would satisfy a long-term objective of the city or no bids are received or no bids are deemed acceptable by the city council, the city may seek to sell land by one of the following:

Marketing - Competitive offers for lease or sale may be solicited from the open market. This may be accomplished through several marketing techniques, such as requests for proposals (RFPs), a marketing subscription system, direct advertising, exposure through real estate services, posting the property, and any other appropriate means. Direct marketing - seeking to sell the property through direct contacts under the following circumstances:

a. When the land is not readily marketable because of its odd shape, lack of sufficient area to meet minimum space requirements for building in the zone in which it is located, landlocked state, or other lack of sales potential, the land may be sold by taking offers or by negotiation with adjoining landowners. It is recommended that the purchase price be within 10 percent of the appraisal. The land may be exchanged for public improvements of equal or greater value that would otherwise be the obligation of the city.

b. When the sale to a contiguous owner would correct a site deficiency or improve access to the other property in a manner desired by the city.

c. When a fee interest in public right-of-way is no longer required, it may be sold to a contiguous owner or exchanged for public improvements of equal or greater value. A restrictive easement of adequate width or other required easements may be reserved from said sale.

d. When other governmental, public, and quasi-public agencies submit proposals to acquire city property, the city shall consider such requests before making the land available to the general public. Such sales shall be at fair market value, unless the council finds that selling at a lesser value is in the city's interest. Selling land at less than the appraised fair market value shall require a four-fifths vote of the city council to do so.

e. When qualified, nonprofit institutional organizations offer to purchase city-owned land, a negotiated sale may be consummated at fair market value, providing there is (1) a development commitment and (2) a right to repurchase or a reversion upon a condition subsequent. Nonprofit and institutional organizations are required to develop under the city's special land use permit procedure.

f. When a property has been offered by public auction and no acceptable bids have been received, it may be sold on a negotiated basis to any applicant submitting an acceptable offer within six months following the date of auction. After six months, any offer must be based on an updated appraisal, the City reserves the right to authorize the use of a licensed appraiser to determine actual value or ask the City Assessor to prepare an appraisal.

g. When a property is to be developed in a manner that would satisfy a long term objective of the city, the sale may be negotiated as long as the objectives of the city are protected by the sale agreement.

h. Real property exchanges may be consummated by direct negotiation; however, exchanges will be considered only when there is an advantage to the city, when it results in land needed for a public purpose, or to further the goals and objectives of the city's comprehensive plan.

#### E. Easements

Where the city or other governmental agency has paid for easements, rights-of-way, or access rights and requests to vacate such interests are received and approved, the city shall receive the current fair market value or equivalent compensation for the removal of the restriction. Easements may be exchanged for other easements or relocated to other locations without compensation.

#### F. Exchanges

When land is exchanged, it shall be done based on the fair market value of each property, the City reserves the right to authorize the use of a licensed appraiser to determine actual value or ask the City Assessor to prepare an appraisal. The City may negotiate that any difference in value may be made up by the party with the lower appraisal value.

#### G. Payment for city surplus property

Sales of real property shall be on an all cash-basis, with the following exceptions:

1. Upon written recommendation and approval by the council, a parcel of surplus real property may be sold on such credit terms as are deemed to be necessary in each case. After the required down payment has been made, the balance of the purchase price shall be secured by a note and deed of trust. The credit payment period shall not exceed five years from the date of execution of the trust deed. Interest shall be at the prevailing rate in the community, and the use of term payments shall be linked to job generation for the sale of commercial or industrial property.

2. Sales to nonprofits performing a public purpose may be in the form of a loan or residual receipts note at less than the prevailing interest rates and for more than five years, provided the note is tied to affordable housing.

## H. Leasing

1. Rate of return. Except for the areas listed below, the city should obtain a fair market rate of return on city-owned property being considered for lease and negotiate terms and conditions which will continue to sustain a fair rate of return through rent review, consumer price index adjustments, reappraisals, or the application of percentage rents to gross income. The rate of return shall be based upon the highest rate commensurate with the highest and best use of the property or a fair rate of return commensurate with the designated public use. Rental rates may be established by the city council based on a current appraisal (the City reserves the right to authorize the use of a licensed appraiser or the City Assessor to determine actual value), comparative studies, or past rents received.

2. Long-term lease. A lease greater than one (1) year requires council approval.

3. Short-term lease. Unless there are special circumstances, the city treasurer without council approval may execute a lease term of less than one (1) year.

4. Selection of lessee. Lease proposals shall be evaluated in terms of:

- a. Consideration offered as rent,
- b. Financial capability,
- c. Expertise regarding the proposed leasehold development and operation,
- d. Nature of proposed development,
- e. Special public benefits to be derived (if any), and
- f. Consistency of the intended use with the comprehensive plan and zoning.

5. Leasehold assignments. Requests for assignment of leasehold interest may be evaluated on the same basis as the criteria used in evaluating a leasehold proposal. The city treasurer may authorize assignments which do not require amendment of the master lease provisions and do not extend beyond the term of the lease.

6. Subleases. Requests for sublease approval will be considered on the merits of each individual transaction. No sublease shall be approved which would be detrimental to the city's rights under the master lease. The city treasurer may authorize subleases which meet this condition and which do not require amendment of the master lease or extend the term of the lease.

7. Amendments. Amendments of long-term leases require council authorization. Whenever there is a substantial amendment, staff shall provide the council an indication of the fair return for the leasehold. This can be accomplished by appraisals, a survey of the market rate of return, a combination of the above, or any other relevant information.

8. Updating lease terms. Lease terms shall be updated as often as practicable whenever there is a request for assignment or significant amendments or subleases are proposed.

9. Financial encumbrances. The city will generally not subordinate its fee interest to encumbrances placed against the leasehold by the lessee without specific authorization of the city council.

10. Tenant improvements. Improvements installed by the lessee will be removed at termination without cost to the city or they will revert to the city. In the event of removal, the property will be returned to "as was" condition. All leasehold improvements and alterations require prior approval by the city

treasurer or city council, depending on the term of the lease. Any improvements within a public right-of-way by a lessee shall be deeded to the city.

11. Lease term. Lease terms will be limited to the shortest practical time commensurate with capital investment in permanent improvements to be made by the lessee following state law.

12. Audits. The city may audit all percentage leases in the first year of operation to establish proper reporting procedures and at least once every three years afterwards. More frequent audits may be made if appropriate. The city shall reserve the right to audit all other leases and agreements if determined warranted by the director of finance or city treasurer. Absent a city audit, a lessee shall submit an annual report certified by a certified public accountant each year within 30 days of the anniversary date of the lease.

13. Cancellation clauses. Short-term leases shall not have cancellation clauses unless they are month-to-month leases.

#### I. Option agreements

1. Option to sell. When properties have been put up for sealed or oral bids and bids have not either been received or been rejected by the city, the city treasurer may enter an option agreement of up to 90 days with someone interested in purchasing surplus property. Any such option agreement shall be subject to the following minimum terms:

- a. Shall not exceed 90 days without approval of the city council;
- b. Shall provide time for the prospective buyer to perform due diligence to see if the property is feasible for his/her purposes;
- c. May require a minimum non-refundable deposit, suggested to be not less than 10 percent of the value of the property per month of the option agreement;
- d. May require forfeiture of the deposit if the property is not placed in escrow within 90 days;
- e. Shall disclose all realtors involved, if any; and
- f. Shall disclose the name of the buyer and his/her intended use of the property.

#### g. Use of proceeds

Unless otherwise directed by the city council, proceeds from sales or leases may be assigned as follows:

- 1. To enterprise accounts, if the property was purchased using ratepayer funds.
- 2. To the general fund
- 3. To a program or grant that requires refunding if the land was purchased using a source of money with that type of restriction.

#### H. Costs to sell, lease, and market surplus properties

Unless otherwise directed, the costs to sell, lease, exchange, or market surplus properties will be charged to the fund to which the proceeds of a sale would go.

## APPENDIX A

The City of Laingsburg from time to time will have parcels that are vital to community and economic development for which proposals should be sought and examined by pre-established criteria. This will normally involve redevelopment projects. In such circumstances, Laingsburg will follow a process similar to the following.

### 1. Preparation of a site development program

Illustrative development plans and guidelines are prepared by the city that reflect and address:

- Economic parameters and feasibility
- Community goals and design criteria
- Physical capacity

There may be extensive public participation in the process to address critical issues such as height, orientation, parking, traffic, general design/materials, and community character. Open workshops may be held early in the process. Typically, this task includes the services of a planning/design firm, civil engineer, and traffic planners and often the services of a development advisor. The result should be a project that is economically feasible and physically reasonable and that meets the goals of Laingsburg.

Development guidelines will be crafted that give prospective developers, direction but still allow the community to tap the creativity and resourcefulness of the private sector.

### 2. Address development readiness of the site

There must be a realistic assessment of factors that may impede development and may be difficult for the developer to address. Issues may include ownership holdouts, demolition, environmental contamination, soil conditions, storm water requirements, infrastructure status and responsibility, title exceptions and other similar problems.

Who is in the best position to address these issues must be evaluated and action taken to resolve the issues. Decisions must be made as to the role the developer may have to play in their resolution. At the very least the key issues should be disclosed.

### 3. Prepare request for qualifications and proposals

A two-step process will usually be followed, first seeking qualifications (RFQ), requesting proposals (RFP) from only a shortlist of not more than five qualified firms or teams. The request for qualifications provides full background information on the project and seeks the experience, track record, financial capacity, and references of development teams.

The two-step process is followed because Laingsburg wants to advertise sale of land and other development opportunities. This creates a “beauty contest” in the eyes of qualified developers. Firms may hire an architect to prepare attractive exhibits, whether or not they represent a feasible plan or the firm has the financial and development capability to deliver. As a result, many best qualified firms will avoid a request for full proposals that is open to all and for which they cannot reasonably assess the odds of success. The cost of a full proposal is too great to incur unless there is a reasonable chance of success.

#### 4. Review qualifications and determine a short list

Qualifications will be reviewed and a short list selected. The review of qualifications will include assessing the relevance and depth of the background of each team, a confidential review of financial capacity, and interviews of references. A short list will be made. This may require interviews and staff/consultant review.

#### 5. Solicit/receive proposals from a short list

Meetings will be held with short-listed teams to provide additional background information and to answer questions that may arise. Other discussions also may occur during this period to help the developers fully understand the municipality's goals. The full proposals will include conceptual site and building plans, financial analysis, requests for city participation, and proposed payments to the city. Each developer will approach the project differently.

#### 6. Evaluate proposals

Proposals will be evaluated in terms of overall quality, financial proposal, responsiveness, level of commitment from financing sources and tenants, etc. This is sometime a summary and comparison or may be more evaluative. In either case, this provides information for use in interviews of the teams.

#### 7. Interviews

Developers will publicly present their proposals to the City Council.

#### 8. Selection

Results of the interview and public comment, if any, then will be considered along with the evaluation of the proposal as for quality, character, track record, ease of working relationship, price offered, and other factors.

#### 9. Negotiation of redevelopment agreement

Following selection, Laingsburg will negotiate the business terms of the redevelopment agreement for the project. This includes both financial terms and the responsibilities of parties. City and special legal counsel may be involved. A redevelopment agreement is the basis for the public-private partnership that occurs. It will be far more than a land sale contract to ensure that Laingsburg gets what it wants. The typical redevelopment agreement may include:

- Approved development
- Time of performance
- Protection on undeveloped land
- Acceptable tenants
- Payments to city
- Excess profit sharing
- Financing terms and public financial role, if any



- Requirements for closing, such as full funding, in balance
- Review and monitoring provisions

This is the opportunity to provide for requirements that reflect the desire to steward the land and achieve key public goals. Some may impact the economics of the project and value of the land, but if they are affordable and acceptable, the redevelopment agreement and covenants that run with the land are the mechanisms to do so and must be done before transfer.

## Appendix B – City Charter

The Laingsburg City Charter places limitations on the sale of property as follows:

### **Sec. 8.4. - Special procedure on vote for certain council actions.**

- (a) Council action to vacate, discontinue or abolish any highway, street, lane, alley or other public place or part thereof shall be by resolution. After the introduction of such resolution and before its final adoption, the council shall appoint a time when it shall meet and hear objections thereto; and notice of the time, place and purpose of such meeting shall be published either separately or as part of any published proceedings of the council.
- (b) The following actions by the council shall require the affirmative vote of four members of the council for the effectiveness thereof:
  - (1) Vacating, discontinuing or abolishing any highway, street, lane, alley or other public place or part thereof;
  - (2) Leasing, selling or disposing of any city-owned real estate or interest therein;
  - (3) Condemning private property for public use;
  - (4) Creating or abolishing any office;
  - (5) Appropriating any money;
  - (6) Imposing any tax or assessment;
  - (7) Reconsidering or rescinding any vote of the council.
- (c) The council shall not have power to engage in any business enterprise requiring an investment of money in excess of \$0.10 per capita unless approved by a three-fifths vote of the electors voting thereon at any general or special election.

### **Sec. 13.6. - Purchase and sale of property.**

The council shall designate an administrative officer of the city as purchasing agent, and he shall be responsible for the purchase and sale of all city property. Comparative prices shall be obtained for the purchase or sale of all materials, supplies and public improvements except (a) in the employment of professional services and (b) when the purchasing agent (or the council as hereinafter provided) shall determine that no advantage to the city would result therefrom.

The council may authorize the purchasing agent to make purchases and sales within a prescribed dollar limit without prior approval of the council. However, in all sales or purchases in excess of \$300.00:

- (a) The sale or purchase shall be approved by the council,

(b) Formal sealed bids shall be obtained unless the council by formal unanimous resolution of those present at the meeting determines that no advantage to the city will result from competitive bidding, and

(c) For purchases over \$1,000.00 the requirements of section 13.6 shall be complied with.

No sale or purchase shall be divided for the purpose of circumventing the dollar value limitation contained in this section. The council may authorize the making of public improvements or the performance of any other city work by any city department or agency without competitive bidding.

Purchases shall be made from the lowest competent bidder meeting specification; sales shall be made to the bidder whose bid is most advantageous to the city. All purchases and sales in excess of \$25.00 shall be evidenced by written contract or purchase order. The council may by ordinance establish detailed purchasing, sale and contract procedures not inconsistent with this Charter.