

Property Disposition Procedure

RATIONALE:

In addition to receiving funding from the Ministry of Education, the Board must rely upon the revenue generated from the sale of surplus property as an alternative funding option.

Under section 194(3) of the Education Act, a board that has adopted a resolution that real property is not required for the purposes of the board, may sell, lease or dispose of the surplus property as governed by Ontario Regulation 444/98.

Hamilton-Wentworth District School Board (HWDSB) recognizes the need to maximize the efficacy of its relationship with the City of Hamilton and the local communities when disposing of surplus property and therefore; as part of the Board's commitment to operate in a professional and responsible manner, HWDSB provides a public information session for interested parties within the local community as part of the two-phased property disposition process. This service is not required as part of Ontario Regulation 444/98.

The purpose of the Property Disposition Procedure is to ensure when the Board is disposing of entrusted property assets that Trustee fiduciary responsibility and effective public sector governance is clearly demonstrated; the Board is in full compliance with all Legislative and Regulatory requirements; directions and decisions are clearly articulated in a timely fashion to the Preferred Agents as identified in Ontario Regulation 444/98 and the Community at large; transparent and timely communication; and the two phases of the property disposition process are adhered to.

TERMINOLOGY:

Bona Fide Offer: A bona fide offer is one that is presented in a legal format and will become binding upon the Board's endorsement. A letter of understanding or intent to purchase, a Board or Council motion or any other form of expressed interest to purchase does not satisfy the legislative requirement and must be rejected.

Disposition of Property: (for this purpose relates to)

- An entire school and property;
- An Administrative property;
- Excess land on a piece of school property (on which a school will continue to operate);
- Vacant land;
- Exchange of Lands.

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Fair Market Value: The most probable price in terms of money which an estate (or interest) in real property should bring in a competitive and open market under conditions requisite to a fair and typical sale between a willing seller and willing buyer, each acting prudently and knowledgeable and assuring the price is not affected by undue stimuli. It is also often referred to as the most probable selling price.

Preferred Agents as identified in Ontario Regulation 444/98: (Prescribed Preferred Agents receiving proposals from HWDSB are listed in priority sequence)

- Any school board that holds or has held in the last fiscal year a leasehold interest in the property being sold/leased;
- French Public District School Board;
- English Separate District School Board;
- French Separate District School Board;
- Facilities that have an agreement with HWDSB to provide a qualifying education program for which ministry grants under section 23 are available;
- City of Hamilton as service system manager for the City (Consolidated Municipal Service Manager “CMSM”);
- Mohawk College of Applied Arts & Science;
- College Boreal d’arts appliques et de technologic;
- McMaster University;
- Lynwood Charlton Centre;
- Hamilton Niagara Haldimand Brant LIHN (Local Health Integration Networks);
- Hamilton Public Health;
- The Crown in right of Ontario;
- City of Hamilton;
- Indigenous Organizations
 - a. Metis Nation of Ontario Secretariat
 - b. Chiefs of Ontario
 - c. Ontario Federation of Indigenous Friendship Centres
 - d. Association of Iroquois and Allied Indians
 - e. Nishnawbe Aski Nation
 - f. Grand Council Treaty #3
 - g. Union of Ontario Indians
- Crown in right of Canada

PROCEDURES:

The two phases of the property disposition process are as follows. The initiation of each phase requires separate Board approval:

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Phase 1 – Circulation to Preferred Agencies – Ontario Regulation 444/98 (180-day period)

- Following the adoption of a Board resolution declaring property surplus to the Board's needs, Ontario Regulation 444/98 can be engaged;
- The Board shall issue a proposal to sell, lease or dispose of real property to the Preferred Agencies;
- The circulation period to Preferred Agencies is a 180-day process;
- Preferred Agents have 90-days to submit an Expression of Interest (EOI) and an additional 90-days to submit a bona fide offer;

- HWDSB administration will hold a public information session within the first 60 days of the 180-day circulation period to inform the local community of the Board's intent and the requirements of Ontario Regulation 444/98 when disposing of surplus property. The public information session provides a key communication service for the local community;
- No offers can be considered by the Board until they expiry of the 180-day circulation period;
- Bona fide offers to purchase received at the conclusion of the 180-day period must be dealt with in accordance with the regulatory requirements of Ontario Regulation 444/98;
- If no bona fide offers to purchase are received at the conclusion of the 180-day period, then Ministry and Board approval must be given prior to proceeding to Phase 2; using alternative methods to dispose of surplus property to others;
- The Board is compelled to satisfy all of the conditions of Ontario Regulation 444/98 and has no authority to alter, deviate or change in any way the legislative requirements;
- Refer to Ontario Regulation 444/98 under the Education Act for the legislative requirements.

Phase 2 – Sale of Property on the Open Market (three-year window from 180-day circulation expiry date)

- If the Board does not receive an expression of interest or a bona fide Offer to Purchase through the 180-day circulation period to the Preferred Agencies; and,
- Subject to the Board receiving Ministry approval to dispose of the property to others;
- The Board will be in a position to dispose of the surplus property at "Fair Market Value" as guided by Administrative direction by way of:
 - Public tendering bid process (opening of tenders closed to the public);
 - Receive Offers to Purchase;
 - Publicly advertise and negotiate a sale;
 - Engage a professional Real Estate firm to sell on behalf of the Board;

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- Transact with an individual purchaser (single source purchaser), when dealing with a unique set of land or development circumstances;
- Administration will provide a monitoring report to the Board outlining the details of an acceptable Offer;
- All property disposition transactions require:
 - Compliance with all provincial and municipal requirements
 - Professional market value assessment
 - Agreements and/or applications to be in a form satisfactory to the Board's solicitor
- Details regarding the sale of Board property is confidential and cannot be released to the public until the sales transaction has closed and title of ownership has been transferred.