



## **TOWN OF LAKEVILLE SELECT BOARD**

### **CHAPTER 61 RIGHT OF FIRST REFUSAL POLICY AND PROCEDURES**

**Adopted: June 12, 2023**

This document serves as a guide for municipal staff, boards, and residents of the Town of Lakeville regarding the Town's right of first refusal when landowners seek to convert or sell land classified or recently classified for tax purposes under M.G.L. Chapter 61, 61A or 61B ("Chapter Land"), to residential, commercial or industrial use.

The provisions of state law governing this process are found in M.G.L. Chapter 61, Section 8, Chapter 61A, Section 14 and Chapter 61B Section 9. Chapter 61 applies to forestland, Chapter 61A applies to agricultural and horticultural land (which may also include forestland), and Chapter 61B applies to recreation land (which may also include forestland). The statute should be consulted for the exact wording of requirements to be followed by all parties.

#### **Notice of Intent**

In accordance with the Chapter statutes, a landowner seeking to sell or convert Chapter Land to residential, commercial or industrial use while the land is so classified, or within one (1) year after the land is removed from classification, must provide a "Notice of Intent" to sell or convert Chapter Land, by U.S. certified mail or hand-delivery, to the Select Board, Planning Board, Assessors, Conservation Commission, and State Forester (c/o the Commissioner of the Department of Conservation and Recreation). It is the responsibility of the property owner to make sure that the Notice of Intent completely satisfies the statutory requirements, which must include at a minimum:

1. A statement of intent to sell or convert.
2. A statement of proposed use of the land.
3. The location and acreage of land as shown on a map drawn at the scale of the Assessor's map.
4. The name, address, and telephone number of the landowner, and the attorney representing the landowner, if any.
5. In the case of an intent to sell land for a Disqualifying Use, a certified copy of an executed purchase and sale agreement specifying the purchase price and all terms and conditions of the proposed sale, which is limited only to the property classified under a Chapter Statute and must be a bona fide offer. To be a bona fide offer, the offer to purchase must be made by a party

unaffiliated with the landowner for a fixed consideration payable upon delivery of the deed, and may not be dependent upon potential changes to current zoning or conditions or contingencies relating to the potential for, or the potential extent of, subdivision of the property for residential use, or the potential for, or the potential extent of, development of the property for industrial or commercial use.

6. Any additional agreements or a statement of any additional consideration for any contiguous land under the same ownership, and not classified under a Chapter Statute, but sold or to be sold contemporaneously with the proposed sale.

If the Notice of Intent to sell or convert does not contain all of the required material, the Town has thirty (30) days following receipt of the Notice to notify the landowner in writing that the Notice is insufficient and does not comply. If the Notice is deemed insufficient, the landowner may resubmit a sufficient Notice.

### **Sale for Residential or Commercial Use – Town Option to Purchase**

For a period of 120 days after the day a complete Notice to Sell is deposited in the mail to all appropriate parties, as shown by the certified mail receipt, the Town shall have a first refusal option to meet a bona fide offer to purchase the land. The Town's options are to:

1. Following a public hearing held by the Select Board, exercise its option to purchase the property upon the terms of the bona fide purchase offer by recording a Notice of Exercise at the Registry of Deeds and providing the landowner written notice of such exercise by certified mail and a purchase and sale agreement; or
2. Following a public hearing held by the Select Board, assign the option to purchase to a nonprofit conservation organization, the Commonwealth or any of its political subdivisions, by recording a Notice of Assignment at the Registry of Deeds, and providing written notice to the landowner, following which the option may then be exercised by such entity in the same manner as the Town and within the 120-day period, or
3. Determine not to exercise or assign its right of first refusal, either before or after the hearing, and notify the property owner that it does not intend to exercise its right of first refusal.

If the Town does not record a notice of exercise or assignment within the 120-day period, the Town will be deemed to have not exercised its option and the option will expire. The landowner may not revoke a Notice to Sell once submitted to the Town.

### **Conversion to Residential or Commercial Use – Town Option to Purchase**

If the landowner intends to convert the use of Chapter Land to a Disqualifying Use (residential, commercial, or industrial use), the Town must take the following steps to exercise its option to purchase the property:

1. Within thirty (30) days from the date of the Notice of Intent to Convert, obtain at its expense an impartial appraisal from a certified appraiser of the fair market value of the Chapter Land

and deliver the appraisal to the landowner.

2. In the event the landowner disagrees with the Town's appraisal, the owner must obtain a second appraisal, at the owner's cost, within sixty (60) days from the date of the conversion notice; alternatively, the owner may accept the Town's appraisal.
3. If the Town disagrees with the owner's appraisal, the owner and the Town will select a mutually acceptable appraiser, who shall deliver the appraisal to the owner and the Town within ninety (90) days from the date of the conversion notice. The value of the Chapter Land as determined by the third appraiser is final.
4. The Town has 120 days from the date on which the fair market value has been determined to decide whether to exercise its option to purchase the Chapter Land, following the same process for exercising an option initiated by a Notice to Sell.
5. A landowner may revoke a Notice of Intent to Convert at any time during the appraisal process.

## **Factors for Consideration**

The Select Board has identified a series of factors to consider when presented with a Notice of Intent to Convert or Purchase & Sale Agreement:

1. Has the property been designated for protection or acquisition in the Master Plan, Open Space Plan or as a Community Priority Area (PDA/PPA)?
2. Does the property have access to municipal water?
3. Does the property have sufficient access to transportation, e.g. roads and/or sidewalks?
4. What is the property's likely development potential?

Other factors could include the presence of wetlands or vernal pools, a natural heritage designation, rivers or streams and public access to water bodies, as well as the character of the surrounding neighborhoods. These considerations, while not determinative, should be utilized to provide insight regarding the most appropriate response to a property's intended removal from Chapter 61.

## **Procedures for Review of Notices and Evaluation of Properties: Roles of Town Staff and Boards**

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This document sets forth a recommended procedure for Town review of a Notice of Intent to sell or convert Chapter Land. It shall not be construed to limit the authority of the Select Board, the Town Administrator, and their designees, who may take actions within their authority regarding such Notices as they deem appropriate.

### Town Counsel

It is recommended that Town Counsel review each Notice of Intent to verify that the Notice is proper and complete. If the Notice of Intent does not contain all of the material required by statute, Town Counsel will notify the Town Administrator, who will provide for delivery of written notification of insufficiency to the landowner within 30 days of receipt.

Town Counsel may be consulted to determine the final day of the 120-day period to exercise an option to purchase and may seek confirmation from the landowner or his/her representative regarding this date.

In the event of a sale, it is recommended that Town Counsel review the purchase and sales agreement to determine whether the agreement constitutes a bona fide offer and does not include any contingencies that are prohibited under the Chapter Statutes (such as subdivision approval). As part of such review Town Counsel may be asked to confirm the fixed purchase price, and to advise the Select Board and the Town Administrator concerning all contingencies in the agreement and the actions the Town must take to exercise or assign the option and purchase the property.

In the event the Town determines to exercise an option to purchase, Town Counsel should be requested to draft the purchase and sale agreement that must be sent to the owner with the Town's notice of exercise.

### Town Administrator

Upon receipt of a legally sufficient Notice of Intent to Convert, the Town Administrator shall consult with the Select Board to determine if the Town will obtain and provide to the landowner an appraisal of the land as required to begin the process of fixing a purchase price for the Town's consideration of its option to purchase the property.

Upon receipt of a legally sufficient Notice of Intent to Sell, and upon final determination of a purchase price following receipt of a Notice of Intent to Convert, the Town Administrator will contact all relevant Town Departments to review the property and assess potential impacts to the Town's natural resources, zoning, master plan, open space plans and the potential impact on Town services. The relevant Town Departments, Boards, Commission, and Committees are as follows:

Select Board  
Planning Board  
Board of Assessors

Conservation Commission  
Open Space Committee  
Park Commission  
Master Plan Implementation Committee  
Inspectional Services Department  
Planning Department  
Police Department  
Fire Department  
Department of Public Works

The Town Administrator may also send the notice to the Wildlands Trust or other relevant local land trusts to determine whether a land trust is interested in the assignment of the Notice of Intent. In addition, the notice will be sent to the Community Preservation Committee for informational purposes; a response or follow up is not expected unless the Select Board decides to pursue an alternative to removal of the property from Chapter 61.

During the initial review period, the Town Administrator will provide the Select Board with an analysis of potential considerations for the property, including relevant historical information, site conditions, development potential and applicability within the context of existing Town planning documents. The Town Administrator will also determine whether prior funds were authorized or appropriated for the purchase of the parcel and inform the Select Board of his or her findings. In addition, the Town Administrator will work with the Board of Assessors to identify fully taxed components of the property if the non-Chapter 61 components have not been previously delineated.

The Town or its assignees, during the 120-day period provided the Town by law to consider exercising an option to purchase Chapter Land, may at reasonable times and upon reasonable notice, enter upon the land for the purpose of surveying and inspecting the land, including, but not limited to, evaluation of natural resources, soil testing for purposes of Title V and the taking of water samples.

#### Boards, Committees and/or Commissions

Upon receipt of notification from the Town Administrator, the Chairs of relevant Boards, Committees and/or Commissions will place the Notice of Intent filing on their next meeting agenda. Any such Board, Department, or Commission will notify the Select Board, within 30 days of receiving the Notice, of their recommendation to the Select Board as to whether the property should be acquired by the Town. If any Board, Department or Commission recommends acquisition they shall also identify and recommend a funding source to the Select Board.

#### Select Board

Following the receipt of a proper and complete Notice of Intent the Select Board will:

1. On properties for which a purchase and sale agreement has been submitted, the Board shall promptly schedule a meeting to discuss the Notice of Intent and any comments from the appropriate Boards, Committees and Commissions on the purchase option. The Select Board may vote at anytime during the 120-day period, with or without a public hearing, not

to exercise the Town's purchase rights.

2. Per the Chapter Statutes, the Select Board shall hold a public hearing with notice in accordance with the Open Meeting Law (M.G.L. Chapter 30A, Sections 18-25) before exercising or assigning the Town's option to purchase. It is recommended that direct abutters to the land be notified of the public hearing.
3. Exercise of the Town's option to purchase, or the assignment of that option, shall be accomplished by vote of the Select Board, followed by written notice thereof mailed to the landowner by certified mail at such address as may be specified in the Notice of Intent, and by recording a Notice of Exercise or Assignment at the Registry of Deeds, all within the 120-day period.
4. On Conversion properties the Board may, but is not required, to allow the appraisal process to be completed, and the value of the Chapter Land determined, before holding a public meeting to consider a Notice of Intent to Convert. Regardless, the appraisal of the property must be completed, and the value of the land determined before the Board may hold a Public Hearing to consider the purchase of the property.
5. The Select Board may vote at the public hearing or at any later meeting, within the 120-day timeframe, to either: a) exercise the option to purchase, b) assign the Town's purchase rights to a qualified nonprofit conservation organization or agency or to the Commonwealth or any of its political subdivisions, or c) decline to exercise the first refusal option or option to purchase.
6. Authorization to purchase Chapter Land must be obtained from Town Meeting, and if possible, should be obtained within the 120-day period. If grant funds have not previously been secured or the Town has not appropriated funds for the purchase, Town Meeting must appropriate the necessary funds. If the funds have not previously been appropriated at an Annual Town Meeting, the Select Board must hold a Special Town Meeting within the 120-day period. Funding procedures in circumstances requiring a debt exclusion, such as a special election, must also be addressed within the 120-day period.

## **Exercise of the Town's Purchase Rights**

The Select Board may consider the purchase of property in executive session when an open meeting could negatively impact the Town's negotiating position in circumstances where negotiation is permitted by statute. Regardless, the Select Board must choose one of four courses of action when considering a Notice of Intent:

### Exercise of First Refusal Option:

If the Select Board decides to exercise the Town's first refusal or option to purchase the land at or after a public hearing, it must:

1. Schedule a Town Meeting and place an article on the warrant for the purpose of obtaining authorization to purchase the property and appropriating the necessary funds.
2. Schedule an election if an override or debt exclusion vote is required to authorize the funding.
3. Send the landowner by certified mail a notice of the Town's exercise of right of first refusal in accordance with the Chapter Statutes and include, with the notice, a purchase and sale agreement signed by the Town that, for a sale, is on the same terms and conditions that were set forth in the agreement between the owner and the buyer, or, in the event of a conversion, the Town's form of purchase and sale agreement, all within the 120-day period.
4. The closing is to occur within 90 days after the purchase and sale agreement is endorsed by the landowner and returned by certified mail to the Town, or upon expiration of any extended period the landowner has agreed to in writing, whichever is later.
  - a. Record at the Registry of Deeds, within the 120-day period, a Notice of Exercise signed by the Select Board, stating that the Board voted to exercise the right of first refusal or purchase option. The Notice should include the name of the owner of the land and a description of the premises which is adequate for identification.
5. As a courtesy, provide written notification of the Select Board's vote to appropriate Town boards, commissions, and committees.
6. Close on the property by the date set forth in the purchase and sale agreement.

Assignment of First Refusal Option:

If the Select Board votes to assign the Town's purchase rights to a qualified nonprofit conservation organization or to the Commonwealth or any of its political subdivisions after a public hearing, the following steps must be completed:

1. The nonprofit must use a "major portion of the property", meaning at least 70% of the property, for any Chapter Lands purposes, but may be permitted to undertake a limited development on the balance (provided it is not larger than the area proposed to be developed by the buyer, in the event of a right of first refusal); the Select Board may place conditions on this use, for example the number of lots in the limited development can be specified, and all land other than that which may be developed is to be bound by a permanent deed restriction that meets the requirements of MGL Chapter 184.
2. The Town must notify the landowner by certified mail in accordance with the Chapter Statutes to the address specified in the landowner's Notice of Intent, of the Town's assignment of its option to a nonprofit conservation organization, stating the name and address of nonprofit organization and the terms and conditions of the assignment, within the 120-day period.

3. The Town also must cause to be recorded at the Registry of Deeds, within said 120-day period, a notice of the Select Board's vote, to include the name of the owner of the land and a description of the premises which is adequate for identification, the name and address of the organization or agency of the Commonwealth which will exercise this option and the terms and conditions of the assignment. The Assignee must exercise its purchase rights, inform the landowner of the exercise, and record a Notice of Exercise, all within the 120-day period.
4. As a courtesy, the Town should provide written notification to appropriate Town boards, commissions, and committees of their vote.

Non-Exercise of First Refusal Option:

If the Town decides not to exercise its purchase rights or its right to assign such rights, the Select Board will:

1. Prepare and send the owner by certified mail a notice of non-exercise in accordance with the Chapter Statutes.
2. Execute a recordable Notice of Non-Exercise signed by the Select Board which contains the name of the record owner of the land and a description of the premises which is adequate for identification purposes. Specific information from the purchase and sales agreement, such as purchase price, may be included in the Select Board's vote and notice to the landowners of non-exercise, but should not be included in the Notice of Non-Exercise to be recorded. The Notice of Non-Exercise may be recorded by the landowner or buyer.
3. As a courtesy, provide written notification to appropriate Town boards, commissions and committees of the vote of the Select Board.

Failure to Act:

If the Town fails to record either the notice of exercise or the notice of assignment within the 120-day period, the Town will be deemed to have failed to exercise its right of first refusal or option to purchase, and the right and option will terminate. Upon termination of the right and option the landowner is free to convert the use of the Chapter Land or to sell said land in accordance with the original terms spelled out in the Notice of Intent.

**The attached checklists shall be used by the Town Administrator's office to ensure that all statutory requirements under M.G.L. Chapter 61 are followed.**