

## *Westminster CHAPTER 61 Lands Policy and Process*

Adopted by the Select Board on January 7, 2022

Whereas the Town of Westminster encourages owners of open lands used for forestry, farming or recreation to enroll their property in the Chapter 61, 61A and 61B preferential tax programs in order to help maintain these lands in their current use, but in doing so, forgoes tax revenue that would otherwise be generated by these lands; and

Whereas owners of land enrolled in these programs are required to grant the Town a 120-day assignable right of first refusal in the event that these lands are proposed to be sold or converted for other uses; and

Whereas the Town of Westminster has the ability to exercise its right of first refusal on land sold for, or converted to, another use within one year of leaving Chapter 61, 61A and 61B; and

Whereas the Town of Westminster has an ongoing need for land suitable for municipal purposes and finds it in the Town's best interest to consider the opportunity presented by withdrawal of land from these programs, to gather information from relevant boards and staff, and to determine whether the Town should exercise or assign its right of first refusal; now

Therefore, the Select Board adopt(s) this Chapter 61 Lands Policy to set forth a clear process by which the Town will review and respond to notices of conversion, or sale involving conversion, of lands in Chapters 61, 61A and 61B and determine whether to exercise or assign its right of first refusal on these lands or not. These policies and procedures are adopted solely for the purposes of coordinating local review. Failure to adhere to these policies and procedures shall not affect any rights that the Town has under MGL Chapters 61, 61A and 61B, nor shall they affect any rights of the landowner.

### **A. Right of First Refusal**

Within 120 days of mailing (not receipt) of a proper notice, Westminster must either:

1. Act to exercise its option to purchase (to meet a bona fide purchase offer or, in the case of intended conversion by the landowner, an option to purchase at full and fair market value), recorded at the Registry of Deeds,
2. Assign its rights to a non-profit conservation organization or the Commonwealth or any of its political subdivisions, recorded at the Registry of Deeds,

Or

3. Notify the property owner that it does not intend to exercise its right of first refusal.
4. Failure to record either the notice of exercise or the notice of assignment within 120 days shall be considered conclusive evidence that the Town will not exercise its right of first refusal.

## **B. Requirements for Notice by Property Owner**

1. The 120-day right of first refusal time-period begins on the date of the mailing or hand-delivery of a notice of the landowner's intent to sell or convert a parcel for commercial, industrial or residential use. This notice must be sent by certified mail or hand delivered to Westminster's Select Board, and also to its Planning Board, Board of Assessors and Conservation Commission, and to the State Forester. This notice must include the following:
  - a. A statement of intent to sell or convert,
  - b. A statement of proposed use of the land,
  - c. The location and acreage of land as shown on a map drawn at the scale of the Westminster Assessor's map,
  - d. The name, address and telephone number of the landowner,
  - e. In the case of an intent to sell, 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 the Chapter, and must be a bona fide offer,
  - f. The purchase and sale agreement must be a bona fide offer defined as a good faith offer that is not dependent upon potential changes to current zoning or conditions or contingencies relating to the property's development potential,
  - g. Any additional agreements or a statement of any additional consideration for any contiguous land under the same ownership, and not classified under the Chapter, but sold or to be sold contemporaneously with the proposed sale,
  - h. A notarized affidavit that the landowner has mailed or delivered the notice will be conclusive evidence that the notice has been mailed in the manner and at the time specified,
  - i. In the case where the intention is to convert the land to another use, the landowner must notify the Town. This notification must include the name, address and phone number of the landowner's attorney, if any.

## **C. Procedure for Review of Notices and Evaluation of Properties**

1. Within seven days of receipt of a proper Notice from a landowner, the Select Board's office shall determine whether the Notice is complete, in proper form and was properly transmitted to the Planning Board, Board of Assessors and Conservation Commission. The Select Board's office may seek assistance in making this determination from the Town Planner, Town Counsel or a regional land trust.

4. If the Notice is determined to be insufficient, the Select Board shall as soon as possible and in no more than 30 days from receipt of the Notice, transmit a certified letter notifying the landowner in writing that the proper notice has not been given and informing him/her that the 120-day clock has not started. A copy of this letter will be provided to the Planning Board, Board of Assessors and Conservation Commission and other boards/officials in Paragraph C(1). The 120-day clock will not start until a proper notice has been received.
5. Upon determining that the Notice was complete, the Select Board shall provide copies of the Notice to the Open Space Committee, Parks & Recreation Commission, Cemetery Commission, Agricultural Commission, Historic Commission, and other relevant Town boards and Town officials along with a date for the Board's public hearing on the Notice.
6. The Select Board's office will also determine the final day of the 120-day period and seek confirmation from the landowner or his/her representative regarding this date.
7. While waiting for the right of first refusal vote, the Assessor shall determine the type of penalty (conveyance tax or penalty rollback) and calculate the penalty amount, draft the Certificate of Penalty Tax and the lien release documents and share the drafts with the landowner, attorney and/or requesting party.
8. The Select Board or its designee shall gather information on the property to determine its community and/or conservation value. The relevant municipal staff will perform an analysis of the location of the property relative to other protected lands using Assessor data, and the land protection priorities listed in the Westminster Open Space & Recreation Plan. An inspection of the property shall occur, with Westminster enjoying all the rights designated to the buyer in the purchase and sale agreement contained in the notice of intent, including surveying, soil testing and water testing. The Town Planner will examine zoning and subdivision control regulations to determine the impact of the potential development on municipal services.
9. Upon a determination that proper Notice was received, the Select Board shall schedule and give notice of a public hearing for the purpose of receiving comments on the importance of the property to Westminster and hold a discussion of whether or not the Town should exercise or assign its right of first refusal. The public hearing will be scheduled within 60 days of receipt of proper Notice from the property owner. In those cases where there is a proposed conversion of the land but no sale, the determination of sale price may take as long as 90 days, at which point the public hearing will be scheduled (see section C (7)). Notice of the hearing is required to be given in accordance with M.G.L. Ch. 39, Section 23B (Open Meeting Law). The Select Board will also notify the Planning Board, Conservation Commission, Open Space Committee and Board of Assessors, and (the other boards and organizations listed in paragraph C (1)). The option to exercise the right of first refusal may only occur after a public hearing.

At the public hearing, the Select Board will afford interested boards, organizations and individuals the right to comment. If there is interest in pursuing acquisition of the property for municipal uses or in assigning the right of first refusal to a non-profit conservation organization or to the Commonwealth or one of its political subdivisions, the Select Board will continue the public hearing as needed to allow time to present a more specific proposal for consideration by the Board. The Select Board may create a Study Committee comprised of the chairs (or their representatives) of these and other boards to assist in developing a proposal.

10. If the landowner is converting the property, and the Town is interested in the option to purchase the land at fair market value, the Town will hire a qualified independent appraiser, and obtain an appraisal of the property within 30 days of receiving the Notice to convert. If the landowner contests the appraisal, the landowner may hire a qualified independent appraiser and obtain an appraisal within 60 days of the Notice to convert. During this process, the landowner may withdraw the notice to convert at any time. If the Town and the landowner cannot agree on an appraised value, then the two parties will jointly hire a third appraiser and obtain an appraisal within 90 days of the Notice to convert. The price determined by the third appraisal will prevail if there is a sale. Upon agreement of a consideration, the Town will have 120 days to exercise its option.

#### **D. Decision by the Town of Westminster**

Based on input at the public hearing and further research as warranted, the Select Board will close the hearing and determine whether to pursue the opportunity to exercise the right of first refusal or not. The Select Board must choose one of four courses of action:

1. If the Town desires to exercise its option, the Select Board shall (not necessarily in this order):

- Record the notice to exercise the option at the Registry of Deeds as part of an affidavit of a notary public during the 120-day period.
- Notify the landowner by certified mail during the 120-day period, at the address specified in the landowner's notice, of the Town's intent to exercise its option.
- Schedule a Town Meeting to be held during the 120-day period, for the purpose of appropriating funds to purchase the property, place a warrant article on the Town warrant for this purpose, and schedule an override vote (if necessary) for the purpose of authorizing expenditure of funds. The Town Meeting and override vote must occur within the Town's 120-day period, unless an extension of this deadline is agreed to in writing between the Town and the seller.
- Complete purchase of the property within 90 days of the Town's notice of its decision to exercise its right of first refusal, unless otherwise agreed to in writing by the landowner.

2. If Westminster desires to assign its right of first refusal to a qualified land trust/conservation agency, the Select Board shall:

- At a public hearing during the 120-day period, vote to assign its right of first refusal to the organization, setting forth any terms and conditions of the assignment.
- Record the notice to assign its right of first refusal at the Registry of Deeds as part of an affidavit of a notary public during the 120-day period.
- Notify the landowner by certified mail during the 120-day period, at the address specified in the landowner's notice, of the Town's intent to assign its option to a non-profit

conservation organization, or governmental agency stating the name and address of the assignee and the terms and conditions of the assignment.

- Assignee must complete the purchase of the property within 90 days of the Town's notification to the landowner that it has assigned its right of first refusal, unless otherwise agreed to in writing by the landowner.

3. If the Town decides to forgo its right of first refusal, the Select Board should:

- Examine the wisdom of recording a limited waiver of its rights at the Registry of Deeds. Any waiver of the Town's rights should be specific to the proposed purchase terms so that if the sale falls through and a new proposal comes forth, the 120-day clock will begin again.
- The Town shall use as much of the 120-day period as is necessary to properly evaluate the property and the potential of exercising or assigning the right of first refusal. It is possible that the Town decides that it cannot afford to purchase the property. Where there is consensus on the absence of conservation value or where the Town has negotiated a signed agreement with the landowner and/or developer that meets the municipal needs with regard to the property, the Town may choose not to exercise its right. Any such negotiations, however, should occur in consultation with the boards/committees entitled to notice by statute.
- Upon deciding not to exercise the Town's right of first refusal, the Assessor shall finalize the Certificate of Penalty Tax and lien release documents. Both documents shall accurately describe the property in question and refer to any deeds, plans, and release all previous liens in place for said parcel. The Board of Assessors shall sign and notarize the Certificate of Penalty and the lien release.
- Following the Board of Assessor's signing of the penalty and lien release, the original Certificate of Penalty document and the Warrant shall be sent to the Town Treasurer/Collector and Town Accountant. Copies of all documents shall go in the taxpayer's chapter file and remain pending until the penalty is received. The Assessor shall hold the original of the signed and notarized lien release until the penalty and recording fees are received by the Treasurer/Collector.

4. The Town can fail to act within the required 120-day period (and any extensions thereof), in which case The Town will be deemed to have failed to exercise its right of first refusal.