

COMCOR 11B.45.01 Disposition of Real Property

11B.45.01.01 Purpose

1.0 To provide policies and procedures whereby disposition is made of certain County-owned real property.

11B.45.01.02 Applicability

2.0 These policies and procedures apply to the disposition of all County-owned real property except:

- A. parcels at the Montgomery County Life Sciences Center;
- B. former school sites containing school buildings no longer in public school use;
- C. sites acquired for specific purposes such as roads, housing projects, and public parking facilities and parking lot districts; sites disposed of for purposes related to roads, housing, matters of significant or strategic interest to the County's economic development; or public parking facilities in parking lot districts;
- D. sites, generally, which are leased for under five years, or splinter parcels which are leased for any length of time.

11B.45.01.03 Definitions

3.0 COUNTY AGENCY - Any department or Agency of the Montgomery County Government.

3.1 COUNTY-WIDE PUBLIC USE - Use of real property available to or benefiting all residents of Montgomery County.

3.2 DISPOSITION - The placement of a site in reservation, the leasing of a site, other than splinter parcels, for five years or more, the assignment of the site's reuse to a County or Outside Agency, or the declaration of the site as surplus.

3.3 EXECUTIVE ORDER ON REUSE AND DISPOSITION - Instrument by which the County Executive places a site in reservation, approves a lease, assigns a reuse, declares a site surplus.

3.4 LEASE - A contract for use of a site, other than a splinter parcel, for five years or more.

3.5 LOCAL MUNICIPAL USE - Use of real property by a limited number of County citizens. This would include use restricted to residents of a local municipality or the

application of special fees or other restrictions on non-local residents for use of the property.

3.6 OUTSIDE AGENCY - Any agency, outside the Executive and Legislative branches of the Montgomery County Government. This would include but not be limited to WSSC, MNCPPC, Revenue Authority, Housing Opportunities Commission, MCPS, Montgomery College, and Local Municipalities.

3.7 SALE BY DIRECT NEGOTIATION - The sale of real property is confined to negotiations between the County and a single potential purchaser. The bid process and the public offering are waived.

3.8 SALE BY FIXED PRICE - An offering of real property for sale at a fixed price. This form of sale is usually part of a sale where other factors such as proposed uses and design are considered as important as the price.

3.9 SALE BY MINIMUM PRICE COMPETITION - An offering of real property for sale to the public wherein a minimum acceptable sales price is stated. Bids below the stated minimum price are not accepted.

3.10 SALE BY PUBLIC AUCTION - A public sale conducted by an auctioneer.

3.11 SALE BY REUSE COMPETITION - An offering for sale based on the proposed reuse. The prospective purchaser is chosen according to the reuse deemed most in the public interest. Price is of secondary importance.

3.12 SALE BY SEALED PROPOSALS - An offering of real property for sale to the public. The highest offer wins the rights to negotiate a contract for purchase. As implied, all proposals are secret until the official time of opening. If contract negotiations fail, the offering is withdrawn.

3.13 SITE RESERVATION - An action taken by the County Executive, via an Executive Order, to defer further disposition actions on the site in question:

- A. in order that the site may be used in accordance with an approved Master Plan,
- B. pending determination of the site's suitability for a project contained in an adopted Capital Improvement program, or
- C. in anticipation of greater reuse or disposal prospects in the future.

Sites placed in reservation may be leased.

3.14 SPLINTER PARCELS - Parcels of such size, shape, topography or other characteristics as to have only nominal value.

3.15 SURPLUS SCHOOLS - Real property that is not needed to meet the present and anticipated future needs of County Agencies and Outside Agencies and that has been designated as surplus by Executive Order pursuant to a Reuse Analysis.

3.16 SURPLUS SCHOOL SITES - Unimproved school sites that have been declared surplus by the Board of Education, approved for transfer by the State of Maryland, and transferred to the County.

3.17 TAX SALE PROPERTY - Property acquired by the County as a result of non-payment of taxes.

11B.45.01.04 Policy

4.0 The County Executive may, pursuant to this Executive Regulation, dispose of County- owned real property not currently programmed, except those properties excluded under Section 2.0, Applicability.

4.1 Property disposition shall be done in a fair and equitable manner that is open to public scrutiny. Review and comment on disposition of real property shall be invited, as specified in this Executive Regulation, from County Agencies, Outside Agencies (including but not limited to MNCPPC, MCPS, and Local Municipalities, where applicable), the public at the public hearing (per Section 9.2.B.), and the County Council.

4.2 Proposals that respond to certain reuse preferences of the County (as supporting other, non-financial public policy objectives) may be given priority over proposals offering higher prices.

4.3 Sites designated for particular public uses in an approved Master Plan (including portions of sites which may be needed for road improvements) and sites which may be suitable for approved CIP projects shall be placed in reservation.

4.4 All other things being equal, County-wide public uses would be given first priority, municipal public uses would be given second priority, quasi-public uses third priority, and private uses would be given fourth priority.

4.5 Sites placed in reservation for Master Plan purposes, or designated by the County Executive for use by an Outside Agency, shall be transferred to the Outside Agency upon payment of the fair market value as determined pursuant to this Executive Regulation, or in accordance with other payment policies established by the County Executive. For sites transferred to the MNCPPC for parks, the MNCPPC shall pay remaining debt service.

4.6 Sites sold to private purchasers must be sold at prices not less than their fair market value as determined by the Director, DPWT (based on one or more independent appraisals), unless otherwise specified in the Executive Order on Reuse and Disposition.

4.7 In disposing of property to private users, the County shall install site improvements only in exceptional cases.

4.8 The County Executive may dispose of County-owned real property through leases containing rights of first refusal to purchase, or options to purchase, provided that the material provisions of these Executive Regulations are complied with at the time of disposition.

11B.45.01.05 Responsibilities and Authority

5.0 Contract Review Committee (CRC) shall approve for compliance with law and Executive Regulations

- A. the method of disposition,
- B. the Request for Proposals, and
- C. the contracts for sale of surplus real property.

5.1 County Attorney's Office shall

- A. approve all deeds, contracts, leases, and forms as to form and legality;
- B. approve the use of outside counsel, and
- C. assist in contract negotiation as needed.

5.2 Department of Public Works and Transportation (DPWT) shall

- A. develop and maintain an inventory of real property,
- B. administer the disposition of real property, and
- C. establish the necessary Departmental procedures and practices.

5.3 Department of Finance shall

- A. administer the disbursement and receipt of funds, and
- B. refer the annual inventory of tax sale properties to DPWT for disposition.

5.4 Office of Management and Budget (OMB) shall

- A. participate in the Preliminary Reuse Review, and
- B. review and comment on Reuse Analyses.

5.5 Chief Administrative Officer (CAO) or his designee shall

- A. approve and sign all options, contracts, and leases; and
- B. approve the Reuse Analysis for referral to the County Council, the Planning Board, and the general public.

5.6 County Executive

- A. shall execute all deeds of conveyance, covenants, and restrictions incidental to the transfer of property by the County.
- B. shall approve the reservation of properties via Executive Order,
- C. shall approve the reuse assigned to a site, via Executive Order, and
- D. shall approve the declaration of a site as surplus, via Executive Order.

5.7 Planning Implementation Section shall

- A. participate in the Preliminary Reuse Review, and
- B. review and comment on Reuse Analyses.

5.8 Office of Procurement shall

- A. be responsible for Bids and Requests for Proposals and review all contracts for sale for compliance with law and Executive Regulations.

5.9 The County Council shall

- A. be provided with opportunity to review and comment on the Reuse Analysis (including recommendations) prepared by DPWT, and,
- B. approve all proposals to sell properties acquired through tax sales, pursuant to Section 52-38 of the Montgomery County Code, 1994, as amended.

11B.45.01.06 Services

6.0 Subject to County law, Administrative Procedures and existing appropriations, DPWT may arrange or contract for services, work or facilities furnished by an individual or agency, public or private, in connection with the proposed or actual disposition of property. This shall include but not be limited to:

- A. Appraisal services

- B. Legal services
- C. Engineering and/or architectural services
- D. Newspaper and other media services
- E. Installation of public facilities
- F. General planning/consulting services

11B.45.01.07 Inventory of Real Property

7.0 DPWT shall develop and maintain an inventory of County-owned real property.

11B.45.01.08 Initiation of Disposition Process

8.0 If a site is in the DPWT inventory as provided for in 7.0 above and is deemed by DPWT preliminarily suitable for disposition, DPWT shall, as a first step, refer the site to Planning Implementation Section and to OMB for Preliminary Review under the procedure below for Determination of Reuse.

11B.45.01.09 Determination of Reuse

9.0 Step 1 - Preliminary Review (OMB and Planning Implementation Section)

A. Master Plan - Within fourteen days, Planning Implementation Section shall review the site in relation to approved Master Plans. Planning Implementation Section should consult informally with the MNCPPC if necessary to ascertain a clear understanding of the Master Plan regarding the site in question. A site specifically designated in an approved Master Plan for particular public uses, or that portion of such site which may be needed for right-of-way for road improvements in the Master Plan, shall be recommended for placement in reservation. If, after review, questions remain about the intention of the Master Plan, the site shall not be placed in reservation for Master Plan purposes.

B. Functional Use - Within fourteen days, OMB shall review the site as to its desirability for future public use as fire stations, police stations or other projects as contained in an adopted Capital Improvements Program (CIP). Current use of the site should be included in this analysis. A site identified as potentially suitable for use in an approved CIP project shall be recommended by OMB to DPWT to be held in reservation until its suitability is determined.

C. For each site recommended for reservation by either Planning Implementation Section or OMB, DPWT shall forward an Executive Order on Reuse and Disposition to the County Executive for decision together with its own recommendations, those of

OMB, those of Planning Implementation Section, and other supporting documents as applicable.

D. Subsequent to County Executive approval, DPWT shall forward copies of the approved Executive Order to all appropriate County and Outside Agencies.

E. If a site is placed in reservation for use by an Outside Agency (pursuant to an approved Master Plan), DPWT shall prepare an agreement for transferring the site to that agency. Payment for the site shall be the appraised fair market value based on the highest and best use, unless otherwise provided for in the Executive Order on Reuse and Disposition, or in accordance with other payment policies established by the County Executive. For sites transferred to the MNCPPC for parks, the MNCPPC shall pay remaining debt service.

F. If, as a result of the Preliminary Review, no reservation of the site is made by the County Executive, DPWT shall proceed to administer the Secondary Review as provided below.

9.1 Step 2 - Secondary Review (Agencies)

A. DPWT shall prepare and distribute to all appropriate County and Outside Agencies information pertaining to the site and shall invite them to propose reuses. Further, agencies shall be encouraged to identify any future needs that might require easements or covenants for attachment to the deed in the event the site is sold; any community use occurring on the site; and any municipal zoning or Master Plan provisions that should be considered.

B. Agencies shall notify DPWT in writing, within 30 days, of their interest in, or comments on, the site. The notification shall include the proposed reuse, if any, along with the pertinent supporting data sufficient to justify the Agency's proposed reuse.

9.2 Step 3 - Reuse Analysis

A. DPWT shall prepare and submit to the County Executive via the Chief Administrative Officer a Reuse Analysis on each site not reserved under the provisions of 9.0 above. This analysis shall include, but not be limited to, a discussion of the following:

1. Proposals made under the Secondary Review process.
2. Individual site characteristics including, but not limited to, zoning (including municipal zoning, where applicable), topography, improvements, utilities, access, and transportation.
3. Marketing conditions including, but not limited to, the cost of development, financing, the scheduled availability of public facilities for the site, and other conditions of the market.

4. All reuse options identified by DPWT or by others to this point, with the advantages and disadvantages of each.

5. Recommendations by DPWT.

6. If DPWT recommends that the site be transferred to any Outside Agency, the appraised fair market value shall be included in the Reuse Analysis.

B. The County Executive shall conduct a public hearing on the DPWT reuse recommendations pursuant to AP 1-9, Public Hearings. (Note: In addition to advertisement requirements provided for in AP 1-9, notice shall be sent to all County Council members, the heads of all Outside Agencies, and the heads of all civic associations whose areas encompass or abut the subject parcel.) The County Executive may waive the requirements of sections 9.2.B., 9.2.C., and 9.2.D.

1. for splinter parcels and

2. for recommended reuse of the site by a County Agency.

The County Executive shall notify the County Council of his waiver decision and his reasons therefor.

C. Simultaneously with the advertisement of the public hearing, DPWT

1. shall transmit the Reuse Analysis to the MNCPPC and to other appropriate County and Outside Agencies (including the BOE and applicable municipality) with an invitation to comment at or before the public hearing provided for above; and

2. shall transmit the Reuse Analysis to the County Council who shall provide comments, if any, on or before the date of the public hearing provided for above. The CAO or his designee shall offer to consult with the Council regarding the Reuse Analysis.

D. After the public hearing, DPWT shall coordinate with the Hearing Officer to submit to the County Executive

1. the Hearing Officer's Report;

2. the Reuse Analysis;

3. responses from MNCPPC and other agencies;

4. the results of consultation with the County Council;

5. an Executive Order on Reuse and Disposition, ready for signature; and,

6. other relevant materials.

E. The County Executive shall, by Executive Order,

1. specify a reuse of the site by a County or Outside Agency, along with any conditions on that reuse;
2. place the site in reservation for determination of reuse at a later date; or
3. declare the site surplus and available for sale in accordance with specified conditions, if any.

F. If use by a County Agency is approved by the County Executive, DPWT shall administer the transfer of control to the receiving agency subject to the following stipulations:

1. The receiving agency shall make substantial progress towards the reuse of the property within two years from the date of the transfer.
2. Extension of control exceeding two years shall be granted only by Executive Order.
3. In the event an extension is not granted, DPWT shall reassume control over the property and reinitiate the reuse process.
4. If the property is being considered for transfer to a third party, the receiving agency shall replace DPWT in the administration of Sections 10.0, 10.1, 11.0, 11.1, 11.2, 12.0, 13.0 through 13.6, 14.0 through 14.2 where these Sections are applicable to the transfer. The price to be paid by the third party shall be the appraised fair market value of the site unless provided for otherwise in the Executive Order on Reuse and Disposition or in other payment policies established by the County Executive.
5. Receiving agencies shall file semi-annual progress reports with DPWT.

G. If use by an Outside Agency is approved by the County Executive, DPWT shall administer the transfer of ownership to the appropriate agency upon:

1. Execution of an agreement, and
2. Payment to the County of the appraised fair market value based on the Highest and Best Use, unless otherwise stipulated in the Executive Order on Reuse and Disposition or in other County Executive policy decisions. For sites transferred to the MNCPPC for parks, the MNCPPC shall pay remaining debt service.

H. If the site is declared surplus, DPWT shall proceed to sell it as provided for below.

11B.45.01.10 Selection of Sale Method

10.0 If not stipulated in the Executive Order on Reuse and Disposition, DPWT may dispose of the site by sale in accordance with any method permitted by State and local law, including but not limited to:

- A. Minimum price competition
- B. Sealed bids
- C. Fixed price
- D. Direct Negotiation
- E. Reuse Competition
- F. Related variations and combinations of the preceding
- G. Public Auction

The criteria for the selection shall include, but not be limited to, general market conditions, potential reuse, characteristics peculiar to the individual site, and conditions of the financing market.

10.1 DPWT shall submit its recommendations for the method to be used to sell the surplus real property, together with supporting Justification, to the CRC for approval. CRC shall approve or disapprove the selected method on the basis of compliance with Law and Executive Regulations.

11B.45.01.11 Requests for Proposals

11.0 If a disposition method involving public offering is selected, DPWT shall develop, and the Office of Procurement shall issue a Request for Proposals or Bids.

11.1 The Request for Proposals or Bids is the formal public notice of the offering of the land. It should be accomplished through publication in one or more newspapers of general circulation in the County and through mailed notices to all persons and firms that have signified to DPWT a bona fide interest in acquiring any of the land in the offering. The information contained in the invitation, at a minimum, should include:

- A. Identification of land to be offered.
- B. A general description of the types of development permitted and conditions of use, plus general notice to bidders of the need to comply with Zoning Ordinance requirements in the event rezoning is proposed.

C. Identification of the kind of disposal and the disposal method, including criteria and procedures for making selection.

D. The cutoff date of the receipt of proposals, if established. This is required in the case of minimum-priced competition, sealed bid, and public auction disposal methods.

E. Instruction on how to obtain further information about the terms and conditions of the disposal and procedures for submitting proposals. The instructions shall state the amount of any fee charged by DPWT for the offering documents (Prospectus) if applicable.

11.2 The Prospectus shall contain all the terms and conditions of the offering. It must be readily available to all prospective purchasers promptly after publication or issuance of the first invitation for proposals. DPWT shall submit copies of the Prospectus to the Office of Procurement prior to publication. The Prospectus should normally contain:

A. The site Plan and Declaration of Covenants and Restrictions, if any. Also, a clear statement of any other restrictions imposed on the property. A description of the property for which proposals are invited, including:

1. Legal and other description sufficient to identify clearly the boundaries and area of the land involved, together with a map or plat showing the location of the land. Location of existing and proposed streets and utilities to serve the property, to the extent available.

2. Information on general grades and evaluations, if available.

3. Information on: test borings and their analysis to the extent available, location and type of existing basements, foundation walls, footings, abandoned utilities, and the extent and character of fill.

4. The County shall not be liable for the accuracy of data and the Prospectus shall contain the appropriate disclosure statement.

B. A statement as to kinds of proposals that may be submitted and a description of the method of selecting purchasers.

C. Proposed form of contract of sale.

D. Statement of requirements for the submission of proposals, including place, cutoff date and time, and documentation required as to the bidder proposal, including the good faith deposit or bid bond requirements.

E. All forms specifically required from the bidder in submitting proposals, including the Warranty of Non-Collusion.

F. Statement describing carrying charges, if any, that may be charcred against the selected bidder prior to transfer of title and payment of the purchase price and the proposed form of deed by which the County will convey title to the land.

11B.45.01.12 Selection of Purchaser

12.0 Upon receipt of bids (or proposals, depending on the selection method employed), DPWT, in consultation with the Office of Procurement, shall select the prospective purchaser.

11B.45.01.13 Contract Negotiation

13.0 Once the purchaser has been selected, DPWT shall negotiate the contract of sale.

13.1 A Declaration of Covenants and Restrictions may be used to provide a recordable document specifying the land use controls on the site. It may cover all or only a portion of the site. The declaration, if used, shall be recorded by DPWT in the County's land records, give constructive notice of its provisions, and be legally enforceable.

13.2 The time permitted for the performance of each obligation in the disposal agreement shall be specified. Such times should be tailored to meet the circumstances, avoiding unnecessary risks and encouraging timely compliance by the purchaser.

13.3 The obligations of DPWT and the purchaser for the installation of any site improvements which are to be provided after the agreement is executed shall be specified in the disposal agreement. The County shall install site improvements only in exceptional cases.

13.4 The land disposal agreement must be adequately secured by a good faith deposit in cash, certified check or other approved security. The amount of the deposit or other security shall be determined by the Director, DPWT. It is normally between 5% and 15% of the purchase price.

13.5 If various segments of a property are to be conveyed on separate dates, a schedule shall be annexed to and made part of the agreement, setting forth the legal description, date of conveyances and amount to be paid for each segment. The determination of the dates and payments for the various conveyances shall be coordinated with DPWT's appraisals and determination of market value. The amount to be paid for a segment may be its market value (as of the date of conveyance) or the prorata share of the total purchase price (although, cumulatively, the purchaser pays only the total contract price for the entire property). The good faith deposit shall be based upon the sales price of the entire property. A map outlining the segments shall be annexed to the agreement.

13.6 Before authorizing a disposal, DPWT shall determine that the purchaser possesses the qualifications and financial means and responsibility to acquire and develop (where applicable) the land in accordance with the proposed disposal agreement.

11B.45.01.14 Approval of Contracts; Notice

14.0 DPWT shall submit all contracts along with supporting documents to the CRC for determination of compliance with the Request for Proposals or Bids and applicable law and Regulations. Once approved by the CRC, the contracts shall be submitted to the Chief Administrative Officer or his designee for execution.

14.1 All proposals to sell property acquired through tax sale shall be approved by the County Council, pursuant to Section 52-38 of the Montgomery County Code, 1994, as amended.

14.2 The proposed disposition shall be advertised by DPWT once a week for three successive weeks in at least one local newspaper of general circulation. In addition, DPWT shall send a notice regarding the disposition to the County Council and to appropriate County and Outside Agencies. The advertisement and Notice shall include the following:

Terms of Sale

Compensation

Purchaser

Proposed use

Legal Description

Opportunity shall be given for objections thereto. Severability

The provisions of these regulations are severable and if any provision, clause, sentence, section, word or part thereof is held illegal, invalid or unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, sections, words or parts of these regulations or their application to other persons or circumstances.

(Administrative History: Reg. No. [31-97](#); Dept.: Public Works and Transportation; Supersedes: Reg. No. 67-91 AM)