

## Selectboard Procedures For Considering Right of First Refusal when Land is Removed from Chapter 61 Programs

Massachusetts has programs that provide for reduced real estate taxes for land used for forestry (Ch. 61), agriculture (Ch. 61A) or open space and recreation (Ch. 61B). These are collectively referred to as “Chapter 61 Programs” and are intended to keep land undeveloped. While in a Chapter 61 Program, real estate taxes are based upon the value of the land for those uses, rather than on the development potential of the land. Reduced annual real estate taxes can be a significant benefit to a landowner.

In exchange for limiting the Town to reduced taxes, the Chapter 61 Programs give the Town a right of first refusal when land in a Chapter 61 Program is sold for or converted to another use. Landowners generally need professional advice when removing land from a Chapter 61 Program.

When land is in a Chapter 61 Program, if the owner intends to convert the land to a non-Chapter 61 use, whether through a sale or a change of use by the current landowner, the Town will have the right to purchase the land, triggered by the landowner giving notice to the Town of the landowner’s intention to sell or convert. The process is more complicated when the landowner is converting because of the provisions for an appraisal to determine fair market value.

For a sale, the notice must include a certified copy of a bona fide purchase and sale agreement. The Town has 30 days to determine if the notice meets the statutory conditions. It is expected that Town Counsel will advise the Town as to the adequacy of the notice.

While Town Counsel is determining the sufficiency of the notice, it is expected that other Town boards and committees will be asked to advise the Selectboard as quickly as possible if the land may be of particular interest to the Town. Assuming that the notice is sufficient, the Town has an option for only 120 days from receipt of the notice to match the terms of sale.

If the Selectboard decides to exercise the option, the Town has an additional 90 days from exercise of the option to close the purchase.

For a conversion without a sale, the notice must include a statement of the proposed new use. As with a sale, the Town has 30 days to determine if the notice meets the statutory conditions. Again, while the Town is determining the sufficiency of the notice, it is expected that the Selectboard will ask other Town boards and committees to advise the Selectboard as quickly as possible if the land is of particular interest to the Town.

The major difference in procedure between a sale and a conversion without a sale is that during the initial 30-day period, the Town must not only determine the sufficiency of the notice, but also must obtain at the Town’s expense an impartial appraisal of the full and fair market value of the land, and provide that appraisal to the landowner. There are

provisions for a second appraisal at the landowner's expense, and a third appraisal with the expense divide between the landowner and the Town. The landowner can withdraw the notice of intent to convert at any time.

Upon agreement with the landowner as to the consideration to be paid for the property, the Town has 120 days to exercise the statutory option to purchase, followed by an additional 90 days to close on the purchase,

As an alternative to the Town exercising the option, the Selectboard may assign the option to a nonprofit conservation organization or to the Commonwealth, subject to the same 120-day and 90-day requirements.

The option to purchase in the event of a sale or conversion does not apply when property has been removed from a Chapter 61 Program for more than a year.

## Guidance for Landowners Planning to Sell or Convert Land in Chapter 61

Plan ahead. The Town has the right to a specified period of time after receiving official Notice of Intent to determine whether or not to exercise its right of first refusal. The Town will take the allotted time and will not be hurried.

It is the responsibility of the landowner to prepare and deliver a complete and proper Notice of Intent. Seek immediate advice from legal counsel.

## Selectboard/Town Administrator Procedures Upon Receipt of Notice of Intent

TA immediately provides copy to SB, and places on agenda for next SB meeting (leaving time for board/committee feedback)

TA immediately provides copy to Town Counsel and requests determination of sufficiency of notice

TA immediately provides copies to and asks for comments ASAP (noting date of SB meeting where this will be discussed) from:

- Conservation Commission
- Open Space Committee
- Planning Board
- Environmental Action Committee
- Historical Commission
- Agricultural Committee
- Board of Light Commissioners
- Princeton Land Trust
- Wachusett Meadows
- DCR
- Other boards/committees in discretion of TA or at direction of SB

First SB meeting following receipt of notice:

- SB reviews/discusses notice, determination of sufficiency by Town Counsel, and comments from boards/committees and other interested parties
- SB makes preliminary determination – is there any Town interest in purchasing or any possible assignment of option?
- If it is a notice of intent to convert, SB decides whether to get appraisal (30-day window)
- If it is a notice of intent to sell, 120-day window

TA works closely and immediately with Town Counsel to get property-specific advice.

## Board/Committee Procedures Upon Receipt of Notice of Intent from Town Administrator

Board/Committee Chair immediately forwards notice to members and requests prompt response back to Chair

Chair collects feedback and forwards to TA before the scheduled SB meeting. As a courtesy, Chair should respond that there is no interest if that is the case.