



CITY OF KEENE

In the Year of Our Lord One Thousand Nine Hundred and Ninety-Six

A RESOLUTION AMENDING THE COUNCIL POLICY RELATING TO SALE OF CITY-OWNED LAND R-78-67


Resolved by the City Council of the City of Keene, as follows:

Resolution R 78-67 is hereby repealed and the following policy with respect to surplus City-owned land shall be as follows in the absence of mitigating circumstances and specific Council authorization.

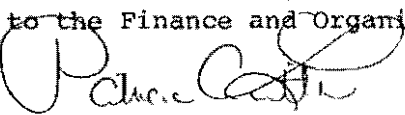
1. No later than thirty (30) days following the acquisition of surplus real property and in no event more than thirty (30) days after a determination by Council that real property owned by the City is surplus property, the City Manager shall:
 - a. Determine the market value of the surplus property; and
 - b. In the case of recently acquired property, determine whether continued ownership by the City is in the best interests of the City; and
 - c. In light of the value and location of the property and giving effect to any special characteristics, determine the most suitable means to dispose of the property; and
 - d. Prepare a report to the Finance & Organization Committee of the Keene City Council, making recommendations regarding disposition of the property.
2. Upon completion of the City Manager's report containing the information and recommendations referred to in paragraph 1, the matter shall be placed on the agenda of the Finance & Organization Committee, which shall:
 - a. Adopt, amend or reject, in whole or in part, the content of the City Manager's report; and
 - b. Deliberate and forward to the Keene City Council its recommendation with respect to the disposition of said property.

PASSED

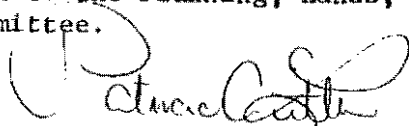
3. In formulating its recommendation to the Keene City Council, the Finance & Organization Committee shall be guided by the following overriding principals:
- a. Except in unusual circumstances directly resulting from characteristics of the surplus property in question, all City of Keene surplus property shall be disposed of by open competitive public bid.
 - b. No Councilor, employee or other official, shall purchase surplus property from the City other than by open, competitive public bid. The provisions of Section 26 of the Keene City Charter, and Chapter 3300 of the Administrative Code of the City of Keene shall be observed by any Councilors, employees or public officials submitting bids. In addition to the sanctions imposed by the Keene City Charter and the Administrative Code of the City of Keene, any bid submitted in violation of any of said provisions shall be rejected.
 - c. In the event that no bids are received with respect to a particular parcel of surplus property, the manner of its disposition shall be determined by the Keene City Council, given the nature, special circumstances, limiting conditions and/or unique characteristics thereof.


Patricia T. Russell, Mayor

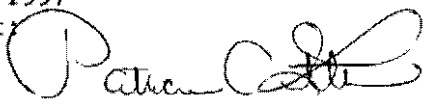
In City Council November 21, 1996
Referred to the Finance and Organized
Committee.


City Clerk

In City Council Decmeber 5, 1996
REferred back to the Planning, Lands, and
Licenses COmmittee.


City Clerk

Passed: February 20, 1997
A true copy; attest:


City Clerk

6A1

**CITY OF KEENE
NEW HAMPSHIRE**

February 13, 1997

In City Council Feb. 21, 1997
The report was filed into the record.

TO: Mayor and Council

Paul
City Clerk

FROM: Planning, Lands & Licenses Committee

SUBJECT: **RESOLUTION -- R-96-29-A: Disposing of City-Owned Property.**

On a vote of 5 - 0, the Committee voted to recommend the City Council adopt resolution R-96-29-A.


Chairman/Designee

Background Notes:

The Chair stated that this amended resolution was attempting to update and address the insufficiencies in the 1978 Resolution. The Resolution was reviewed by the Finance and Organization Committee and was referred back. The Chair reviewed the concerns raised by the City Assessor at a November 1996 Planning, Lands and License Committee meeting.

The Committee then reviewed and discussed the recommended changes by the City Attorney. The Chairman relayed concerns expressed by Councilors about including language in part 3, section b, to ensure that government officials or employees would not get information that may not be available to the general public. The Chairman recognized the City Attorney who stated that this was addressed by the inclusion by reference Section 26 of the City Charter, Dealings of Councilors with City, and Section 3300 of the City Code, Dealing with the City.

Councilor Coates stated that the Finance and Organization Committee talked fairly extensively on this issue and wanted to ensure that the concerns over inside information were addressed. Discussion continued on how to tighten the language of part 3, section b. Motion was made that the following language be added to part 3, section b:

"No councilor, employee or other official shall be allowed to bid on surplus property if they are aware of any information not available to the general public or have participated in discussions in nonpublic or executive sessions relating to the sale of surplus property."

The Chairman asked the City Attorney if the language was appropriate. The City Attorney indicated that this language would include information that was received from outside sources other than governmental. An example would be if a local well contractor passed on that while they were drilling a well they found something. The Councilor, employee, or official would have to disqualify themselves because they knew information not available to the general public. The City Attorney stated that he felt that the current language of incorporating Section 26 of the City Charter and Section 3307.0 of the City Code address the councilors concerns. The City Attorney then reviewed each section.

Section 26 of the City Charter, Dealings of Councilors with City, states the following:

"No Councilor, or other official, shall sell to or buy from the City any goods, professional services or non-professional services, or commodities while in office other than by open competitive public bid. In an emergency, the provision, of this section may be waived by a majority vote of the City Council."

Section 3307.0, Disclosure of Certain Information Relating to Conflict of Interest, of the City Code states the following:

"No official or employee shall use or disclose any confidential information acquired in the course of his or her official duties, or use such information to further his or her own, or others' interests. This shall not prohibit any such official or employee from acquiring, disseminating, and utilizing any information which is available to the public in general."

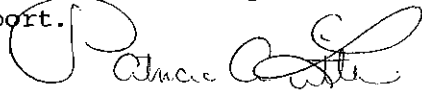
State law was also reviewed:

"95.1 PUBLIC OFFICIALS BARRED FROM CERTAIN PRIVATE DEALINGS.
No person holding a public office, as such, in state or any political subdivision governmental service shall, by contract or otherwise except by open competitive bidding, buy real estate, sell or buy goods, commodities or other personal property of a value in excess of \$200 at any one sale to or from the state or political subdivision under which he holds his public office."

The original motion was not seconded. The Committee agreed that the language in Section 26 of the City Charter and Section 3307.0 of the City Code addressed their concerns. The Committee also agreed that Resolution R-96-29-A was in compliance with all applicable City Codes and policies.

It was motioned that the Planning, Lands, and License Committee recommend the City Council adopts resolution R-96-29-A. Motion was seconded.

In City Council November 21, 1996
Voted unanimously to carry out the intent
of the report.



City Clerk

City of Keene
New Hampshire

November 19, 1996

3A6

TO: Mayor and City Council
FROM: Planning, Lands & Licenses Committee
SUBJECT: Resolution: R-96-29: Disposing of City-owned property

On a vote of 4 - 0 the Committee recommends the resolution as amended to be known as Resolution R-96-29 A be referred to the Finance and Organization Committee for its recommendation relative to allowing public officials and employees to bid on City owned property when it is offered for sale .



Chairman/Designee

Background Notes:

City Attorney, Gerry Carney reviewed draft amendments to resolution R-96-29 amending the Council policy relating to sale of City owned land. He suggested a change in the language in paragraph 3, subparagraphs a and b from "sealed public bid" to "open competitive bid" and striking the word "sealed" in the last sentence of subparagraph b to read "any bid". Chairman Beauregard noted that the language was consistent with that of the City Charter.

Councilor Berry asked if the effect was to allow Councilors and City Employees to bid on City property. Attorney Carney responded that the purpose was to update the Council policy relating to the sale of City owned property.

Councilor Greenwald suggested that in paragraph 3, subparagraph b the word "employees" be added to the second sentence.

Councilor Lovejoy asked what was the past language as it related to allowing City Officials to bid for City property. Attorney Carney responded that under the existing policy contained in R-78-67 employees and officials are disqualified from bidding on land unless they are an abutting property owner. Councilor Lovejoy expressed concern that the proposed resolution is a great change in intent. He stated that public officials and employees may have an advantage in acquiring information about City property and that they should not be permitted to bid for it.

The Committee noted that the new language was consistent with the City Charter, Rules of Order, Conflict of Interest Ordinance and State Law. If the policy as proposed is really unfair then perhaps consideration should be given to changing the Charter, etc. The Committee concluded that the issue was one of organization and should be referred to the Finance and Organization Committee.

City of Keene
New Hampshire

3 November 1997

3A7
In City Council November 6, 1997.
Report filed into the record.

TO: Mayor and Council

P. Cal
City Clerk

FROM: Finance & Organization Committee

RE: MEMORANDUM – CITY ASSESSOR – DISPOSITION OF CITY
PROPERTY

Upon consensus of the Finance & Organization Committee, this report
was accepted as informational.

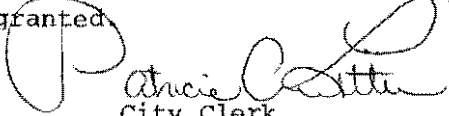
Cynthia C. Georgina
Chairman/Designee

Background Notes:

City Assessor Laura Thibodeau addressed the Committee and explained that on July 3, 1997, the City Council authorized the City Manager to dispose of certain City-owned properties. She explained that 15 properties were to be disposed to abutters and six properties were to be sold on open competitive bid. She explained that six properties are scheduled for public inspection on November 5th with bids to be received no later than November 14, 1997. She did indicate, however, that 41 Spring Street is a small parcel of land adjacent to the Middle School and is presently being used as a parking lot by the School District. She indicated her concern that this property was not adequately identified in the previous discussions with City Council. She explained that for that reason this parcel of property is not currently scheduled to be inspected and advertised for sale with the other five properties. Councilor Blastos explained that it was the wish of the Council to have all six properties sold and questioned the decision to not sell the property in question at this time. Assistant City Manager Alfred Merrifield stated that it does not necessarily mean that this property will not be sold but that in the preliminary discussions about this property (identified as 41 Spring Street), it was his opinion that this particular parcel was not clearly identified as the parking lot currently used by both City staff and School District personnel at the time these properties were being reviewed. For that reason, he suggested that there be a delay to allow the City Council to further review the property at 41 Spring Street to determine final disposition.

In City Council November 7, 1996
More time granted

City of Keene
New Hampshire

3 D 1

Patricia Costello
City Clerk

November 1, 1996

TO: Mayor and City Council
FROM: Planning, Lands & Licenses Committee
SUBJECT: Resolution: R-96-29: Disposing of City Property

This item was placed on more time.



Chairman/Designee

Background Notes:

Chairman Beauregard said that this item was referred back to Committee by the Council and that the Committee has received comment from Laura Thibodeau, City Assessor. He said that the Resolution currently in effect is outdated and needs review. He also said that Attorney Carney was asked to review the issue.

Attorney Carney summarized a memo to the Committee which reviews relevant State law, City Charter sections and R-78-67 regarding the sale of City owned land. He said that parts of R-78-67 are no longer relevant to the disposition of property in 1996. He said that if the Committee wants to proceed with a change to the existing resolution then it should consider whether or not to use an Ordinance, Resolution or policy. He said that Resolutions and Polices are similar in nature and added that Ordinances have the force of law. He suggested several issues the Committee should consider including: 1) a declaration that property be disposed of as soon as possible; 2) the manner in which it is disposed e.g. sealed bid, auction, sale by broker; and 3) a policy in the event no bids are received. He recommended that the amendment include specific actions for the City Manager to carry out.

The Committee discussed the issue including potential for Conflict of Interest and the process for identifying land and establishing minimum price. There was general agreement that the Conflict of Interest Law and the sealed bid process adequately covers the sale of City property to its representatives and employees.

Laura Thibodeau, City Assessor reviewed the memo she submitted with the Committee packet said that this is a good time to clean up R-78-67. She said that the reference to obtaining an opinion of value from the Board of Assessors is no longer valid because the Board does not do that. She said that the minimum value of \$5,000 over which an appraisal is required is no longer relevant because of higher property values. She also said that the requirement to notify abutters is subjective.

Mitch Greenwald asked if an inventory of City property could be included in the language to establish a basis for the Council to determine which properties are surplus and suggested that a review of properties could be carried out on a regular schedule.



CITY OF KEENE

In the Year of Our Lord One Thousand Nine Hundred and ~~...Ninety-Six~~.....

A RESOLUTION AMENDING THE COUNCIL POLICY RELATING TO SALE OF CITY-OWNED LAND (R-78-67)

Resolved by the City Council of the City of Keene, as follows:

That the policy of the Keene City Council in relation to the sale of City-owned land be amended to read as follows, unless the Council votes to take other steps in specific cases:

1. Obtain source of land

a) Tax-title land

- 1. Obtain an opinion of value from the Board of Assessors
- 2. Circulate among department heads to determine whether or not any of them have any need for the land
- 3. Same procedure hereafter as in "b)3." and "2" below


b) Other land

- 1. Determine source of land (gift, purchase, etc.) and determine whether or not there are any restrictions as to use or disposition
- 2. Circulate among department heads to determine whether or not any of them have any need for the land
- 3. Obtain a letter of opinion of value from Assessors
- 4. Then follow procedure outlined hereafter

2. Recommended method of disposition

- a) If Assessors' opinion indicated land is worth more than \$5,000 (five thousand dollars), obtain outside appraisal
- b) Contact or notify all abutters and/or other parties adjudged to be interested of availability of land and solicit bids
- c) Advertise land in newspaper if such procedure is indicated
- d) Recommend sealed bid procedure rather than auction in most cases

3. All sales must be approved by City Council. All sales must include costs incurred by the City directly related to the sale process and taxes and related costs outstanding.

1. City Council October 17, 1996
 Referred to the Planning, Lands, and Licenses Committee.

 Patricia A. Russell
 2. City Clerk

Patricia Russell, Mayor

PASSED

In City Council October 17, 1996.
The report was filed into the record.

City of Keene
New Hampshire

Patricia Carter
City Clerk

6B1

October 11, 1996

TO: Mayor and City Council
FROM: Planning, Lands & Liscenses Committee
SUBJECT: Communication: Councilor Beauregard - Policy of Disposing of City-Owned Property

On a vote of 5 - 0 the committee recommends the City Council amend Resolution R-78-67 relating to the sale of City owned land by deleting subparagraph 2 e "Recommend City employees and/or officials be disqualified from bidding on land unless said person is an abutting owner" in its entirety.

William Beauregard
Chairman/Designee

Background Notes:

Chairman Beauregard stated that during recent discussions regarding the disposition of City owned real estate, he became aware of Resolution R-78-67 that establishes a policy for the sale of City owned land. One section of the Resolution prohibits City employees or officials from bidding on any such land unless they are an abutting property owner. He wanted to get a sense of the City Council on this policy. He asked City Attorney, Gerry Carney to comment. Mr. Carney stated the City Council formalized it's policy regarding the sale of City owned land with the adoption of Resolution R-78-67 in response to abutters requests to purchase pocket parks in the Maple Acres subdivision. He pointed out that the policy of prohibiting City employees and public officials from bidding on land unless they are an abutting owner is more stringent than the City Charter, State Statutes or Case Law which require that it be by sealed competetive bid.

The committee discussed whether to recommend amending the Resolution or deleting the Resolution and adopting an ordinance that addresses the sale of City owned property. Mr. Carney stated that resolutions are a statement of policy where as an ordinance would have the force of law. He cautioned that the committee give careful consideration before recommending an ordinance. He noted that a problem with resolutions is that they are not codified and it is difficult to keep track of them. The committee agreed that the provision prohibiting City employees and/or officials from bidding on City land should be removed but that the entire matter needed further discussion. The Chairman asked that the subject matter be placed on the committee's next agenda.

CITY OF KEENE
NEW HAMPSHIRE

October 24, 1996

TO: Planning, Lands & Licenses Committee
FROM: Gerald J. Carney, City Attorney
RE: Councilor's Participation in Open Bidding

As per your request, I have reviewed various documents relative to this issue and can report as follows.

The Keene City Charter addresses the issue of Councilors' dealings with the City at Section 26.

"Section 26 DEALINGS OF COUNCILORS WITH CITY. No Councilor, or other official, shall sell to or buy from the City any goods, professional services or non-professional services, or commodities while in office other than by open competitive public bid. In an emergency, the provisions of this section may be waived by a majority vote of the City Council."

The Conflicts of Interest Ordinance deals with this issue at Section 3306.0.

"3306.6 DEALING WITH THE CITY. No official or employee shall sell to or buy from the City any goods, professional services or non-professional services, or commodities while in office or the employ of the City other than by the City's standard competitive purchasing practices as defined herein. In an emergency, the provisions of this section may be waived by a majority vote of the City Council."

Section 14 of the City Council Rules of Order deals exclusively with voting and conflict of interest and does not address the issue of Councilors' dealings with the City.

Resolution R-78-67, which establishes a policy for the Keene City Council with respect to the sale of City-owned land, specifically addresses the issue of participation in this process by City Councilors. Paragraph 2, entitled, "Recommended method of disposition," provides in subparagraph e) as follows:

"e) Recommend City employees and/or officials be disqualified from bidding on land unless said person is an abutting owner."

RSA Chapter 95, Section 95:1 deals with this issue.

"95.1 PUBLIC OFFICIALS BARRED FROM CERTAIN PRIVATE DEALINGS. No person holding a public office, as such, in state or any political subdivision governmental service shall, by contract or otherwise except by open competitive bidding, buy real-estate, sell or buy goods, commodities or other personal property of a value in excess of \$200 at any one sale to or from the state or political subdivision under which he holds his public office."

The annotations to this section cite several cases involving government officials participating in open competitive bidding for the acquisition of municipally owned land. See, for example, Preston v. Gillam, 104 NH 279 (1926). The headnote reads as follows:

"The fact that a selectman of a town expressed an opinion that a certain parcel of town land should be sold with all other disposable town land at one sale and was unsuccessful bidder on such parcel at duly advertised auction sale conducted by town did not as a matter of law constitute conflict of interest vitiating his vote to sell such property or the sale thereof."

As we discussed on 7/23/96, this Resolution adopts a more stringent policy with respect to dealings by Councilors with respect to City-owned land. It appears to adopt a procedure for the disposition of this land which favors the considerations of abutting owners, even when the abutting owner is a Councilor, and accordingly, does not appear to adopt any standard which is inherently in conflict with the concept of a City Councilor participating in a competitive bid process.

/deg

City of Keene, New Hampshire
Department of Assessment

October 21, 1996

To: Councilor William Beauregard, Chairman - PLL

From: Laura Thibodeau, City Assessor *Laura*

Re: R-78-67 Disposal of City Owned Land

Please allow this memorandum to serve as a continuation to our brief conversation following the Planning, Lands and Licensing meeting on October 9, 1996. As I stated, I have a few minor concerns with the contents of R-78-67 and would like to take this opportunity to relay those concerns to you.

1. The Resolution relates to the sale of City-owned land. It is my opinion the word "land" should be changed to read **land and buildings or real property or real estate**. This change would encompass all property the City of Keene holds title to.
2. Under 1. a) 1, and b) 3, the Resolution specifically states the Keene City Council will "obtain an opinion of value from the Board of Assessors" or "...from Assessors". The Board of Assessors serve the City of Keene in a quasi-judicial function in that they determine the equity of an assessment based on evidence submitted to them. I do not believe the Board of Assessors are in a position to render an opinion of value. I believe the opinion of value should be obtained from the City Assessor or other individual(s) as directed by the City Council. At this juncture, a fee appraisal could be ordered if deemed appropriate.
3. Under 2. a), the Resolution specifically states "If Assessors' opinion indicates land is worth more than \$5,000, obtain outside appraisal." It is my opinion that \$5,000 is somewhat restrictive and perhaps consideration should be given to increasing that amount to \$50,000 or more. It is also my opinion that an outside appraisal should be obtained in the event the property is complex (example: multi-Tenanted commercial property) or some condition exists that is beyond the ability of the Assessor (example: environmental contaminated properties). Also, by obtaining an outside appraisal, the City receives a value from a disinterested party.

TO: Mayor and City Council

FROM: William A. Beauregard, City Councilor

RE: City employees/officials participation in open bidding

DATE: October 4, 1996

When the City Council recently discussed the disposition of the real estate the City had acquired on June Street I became aware of Resolution R-78-67. This resolution establishes a policy regarding the sale of City-owned land. A section of this Resolution prohibits City employees or officials from bidding on such land unless they are an abutting owner (see Resolution R-78-67, paragraph 2, subparagraph e).

I would like to have this policy discussed by the appropriate City Council committee and have the background of Resolution R-78-67 provided as part of that discussion. I have spoken with the City Attorney and he agrees this Resolution establishes a standard much more stringent than that contemplated in the Keene City Charter (Section 26), the Conflicts of Interest Ordinance (Section 3306.6) or State of New Hampshire state law (RSA Chapter 95, Section 95:1). All of these documents allow participation as long as an open competitive bid process is utilized. He has prepared a memorandum summarizing his findings which is attached.

If employees or officials follow the open bidding process and are excused from any non-public discussion regarding the disposition of City-owned land, I wonder why a different standard should be applied to their participation. Ironically, this group *can*, by the terms of the Resolution, bid on land if they are "an abutting owner." This begs the question of why the standard put forth in the Resolution is different for abutters than it is for non abutters. Further, which of the many definitions of "abutter" should be applied when satisfying the intent of this Resolution?

While City employees or officials must strive to avoid even any appearance of conflict of interest, Resolution R-78-67 seems to contemplate a standard inconsistent with City policy. The Keene City Charter allows the sale or purchase of "goods, professional services or nonprofessional services, or commodities" through the open bid process (Section 26). I appreciate the City Council discussing this Resolution and its background. I hope this inconsistency can be resolved.