

Public Auction

47 Fort Point Road, Trinity, NL

Procedures and conditions

Land on Southwest Arm in the Town of Trinity, which measures on the south approximately 259 metres (965 feet) frontage along Fort Point Road and is bounded on the west by 41 Fort Point Road [ID#196-203] and on the north by the waters of Trinity Harbour and on the east by property of 67 Fort Point Road [ID#196-205] ("Property").

1. The Town of Trinity will sell the Property by public auction. The auction will be held at the offices of the Town of Trinity located at the BEDA Building, Route 239, Trinity at 10:00 AM on Friday, 22 August 2014.
2. Bidders must register with the Town of Trinity prior to being able to bid. Bidders may bid through agents provided the name and address of the bidder and agent is disclosed by depositing with the Town Clerk prior to the commencement of the auction a power of attorney in the form attached.
3. To register for the auction, all bidders are required to deposit \$5,000.00 in cash or by a certified cheque or bank draft payable to "O'Dea's Realty and Auction Room Ltd., In Trust".
4. The Property will be sold "as is where is" to the successful bidder. The Town of Trinity shall not be obliged to provide an abstract or other evidence of title. The Town of Trinity may prepare a survey of the Property in advance of the auction in which case the cost of the survey will be included as a cost to be recovered in the auction price.
5. On the conclusion of the auction, the successful bidder's deposit of \$5,000.00 will be cashed and applied to the taxes, interest and costs owing in respect of the Property ("Arrears"). In the event the amount of the highest bid is in excess of the Arrears, the balance, plus HST, if applicable, shall be paid as follows:
 - a. A certified cheque or bank draft payable to the Town of Trinity in an amount representing the difference between the \$5,000.00 deposit and 15% of the successful bid price ("Purchase Price"), to be received by the Town of Trinity before 3:00 PM on the day of the auction, and
 - b. A certified cheque or bank draft in the amount of the balance of the Purchase Price on the closing of the sale.Failure of the successful bidder to complete the sale will result in the successful bidder forfeiting the amounts set out in 5a and 5b above to the Town of Trinity.
6. The successful bidder must enter into an agreement for sale in the form provided by the Town of Trinity which will provide that the sale shall close within 30 days of the auction date. The Town of Trinity reserves the right to extend the completion of the sale for any reason including, but not limited to, the requirement to obtain a clearance from the Province of Newfoundland and Labrador as to whether the property is Crown Land.

7. The sale to the successful bidder is conditional on a subsequent clearance from the Province of Newfoundland and Labrador that the Property is not Crown Land. If, subsequent to the auction, the Property is found to be partly or wholly Crown Land, the sale will be considered null and void and the Town of Trinity will return all monies paid by the successful bidder in respect of the sale.
8. The Town of Trinity will provide the successful bidder with copies of any title documents relating to the Property which are in its files. At the closing of the sale, the Town of Trinity warrants title only as being free from encumbrances of the Town of Trinity. For greater certainty, the Town of Trinity does not warrant title as being free from any adverse claim either before or after the sale by auction. With respect to the Property, the Town of Trinity makes no representations, warranties, or guarantees, expressly or by implication, in connection with title, encumbrances, description, location, dimensions, condition, compliance with governmental regulations or fitness for a particular purpose of the Property.
9. The Town of Trinity will provide the successful bidder with a deed of conveyance which will vest the Property in the name of the successful bidder in accordance with section 147 of the *Municipalities Act, 1999* which states:

Vesting of property

147. The conveyance referred to in section 146 shall be conclusive evidence that the provisions of this Act with reference to the sale of the real property described in that conveyance have been fully complied with, and everything necessary for the legal perfection of that sale has been performed, and shall have the effect of vesting the real property in the purchaser, his or her executors, administrators or assigns absolutely free from encumbrances except a claim of the Crown and an easement.

10. **Conditions Of Sale By Public Auction**
 - a. The highest approved bidder will be the buyer subject to:
 - (i) the reserve price; and
 - (ii) the seller's approval.
 - b. The Town of Trinity reserves the right to bid in at the auction.
 - c. The bidder warrants the ability to enter and complete the Contract of Sale in accordance with its terms, (without conditions such as financing, inspection, etc) and without modification.
 - d. Any person bidding on behalf of another person must provide the Town of Trinity with a copy of a Power of Attorney, in the form attached, at the time of registration and such authority may be subject to approval of the Town of Trinity, otherwise the bidder will be taken to be acting on his/her/its own behalf. Realtors are welcome to participate on behalf of their clients provided the following is delivered to the Town Clerk prior to the commencement of the auction: (i) the name of the client and related data and (ii) a power of attorney, in the form attached. Any commission arrangements are to be agreed between the realtor and the bidder as no commission is payable by the Town of Trinity.
 - e. The Auctioneer has the discretion to refuse to accept any bid from any person. A bid will be taken to be accepted and irrevocable unless the Auctioneer, immediately after it is made, refuses it.

- f. The decision of the Auctioneer is final in all matters relating to the auction and no bidder has any right of recourse against the Auctioneer or the Town of Trinity. If there is any dispute over a bid, the Auctioneer may:
 - (i) re-open the bidding and resubmit the Property for sale starting with the highest bid previously accepted; or
 - (ii) determine the dispute in any other way the Auctioneer considers appropriate in the Auctioneer's absolute discretion.
 - g. Immediately on the fall of the hammer, the bidder of the highest bid accepted must sign, as buyer, the Contract of Sale in the form supplied by the Town of Trinity and pay the amount set out in 5a above. The balance of the Purchase Price, plus HST if applicable, shall be paid on the closing of the sale.
 - h. The Auctioneer shall witness the Contract of Sale immediately after the auction has ended. The successful bidder agrees that the Auctioneer is not acting as the bidder's agent or otherwise represented by the Auctioneer and the Auctioneer's only obligation is to provide information relating to the auction and conduct the auction on behalf of the Town of Trinity.
 - i. If the successful bidder does not pay the full Arrears, at the option of the Town of Trinity:
 - (i) the result of the auction will be treated as invalid and the Property may be resubmitted to public auction at the risk and expense of that bidder; or
 - (ii) the Town of Trinity may affirm the Contract of Sale and pursue its legal and other remedies against the bidder as it sees fit.
 - j. Other special conditions may apply and will be communicated on the day of the auction.
11. The Town of Trinity reserves the right to waive any or all of the terms and conditions of the auction.

To bid at an auction:

- Attract the Auctioneer's attention by using a gesture such as raising your hand, calling out or nodding your head when you catch the Auctioneer's eye.
- Don't hesitate to indicate your interest when the auction starts and the Auctioneer calls for your bids. Your bid does not have to be the amount nominated by the Auctioneer, although it is at the Auctioneer's discretion as to whether or not to accept a bid.
- Don't leave your bidding until the last moment - you may just miss the Property.
- Remember, subject to the reserve price, when the hammer falls the highest bidder is the purchaser.
- Bidders will register in advance and will need to provide photo ID in the form of a driver's license or passport or other ID as deemed appropriate by the vendor's agent.
- Closing date will be within 30 days from the date of the auction.

Registration Form
Public auction of 47 Fort Point Road, Trinity, NL

Name _____

Name of Business _____

Bid Number _____

Driver's License ID number _____

Mailing address home _____

Mailing address business _____

Business Phone number _____

Cell Phone number _____

Home Phone Number _____

Email address _____

I have read and agree with all of the contents of the document titled "Public Auction, 47 Fort Point Road, Trinity, NL" and all conditions outlined therein. Furthermore, I hereby deliver a certified cheque, bank draft or cash in the amount of \$5,000.00 payable to "O'Dea's Realty and Auction Room Ltd., In Trust" in order to participate in the auction. In the event I am the successful bidder, I agree to pay the Purchase Price, plus HST if applicable, as follows:

- i. A certified cheque or bank draft payable to the Town of Trinity in an amount representing the difference between the \$5,000.00 deposit and 15% of the Purchase Price, to be received by the Town of Trinity before 3:00 PM on the day of the auction, and
- ii. A certified cheque or bank draft in the amount of the balance of the Purchase Price on the closing of the sale.

I agree that should I fail to complete the sale I will forfeit the amounts set out in i. and ii. above to the Town of Trinity and the Contract of Sale shall be deemed to be null and void.

Signature of Registrant _____

Date _____ Time _____

Witnessed by _____

Contract of Sale

I/We _____

of _____ (“Purchasers”) having inspected 47 Fort Point Road, Trinity, in the Province of Newfoundland and Labrador (“Property”) offer to purchase the Property from the Town of Trinity (“Vendor”)

At a price of \$_____ plus HST, if applicable, in lawful money of Canada (“Purchase Price”) by certified cheque or bank draft upon the following terms and conditions payable as follows:

- i. \$5,000.00 payable to “O’Dea’s Realty and Auction Room Ltd., In Trust” as a deposit with my/our bid registration form,
- ii. \$_____ being the difference between the \$5,000.00 deposit and 15% of the Purchase Price paid to the Town of Trinity on or before 3:00 PM on the date of the auction, and
- iii. \$_____ being the balance of the Purchase Price on or before _____ (“Closing Date”)

On the following terms and conditions:

- 1. The Vendor does not warrant the location, dimensions or condition of the Property and that the sale is pursuant to section 147 of the *Municipalities Act 1999*.
- 2. Vacant possession to be given by the Vendor and the transaction of purchase and sale shall be completed on or before the Closing Date.
- 3. This agreement constitutes a binding contract of purchase and sale, and time shall in all respects be of the essence hereof.
- 4. This agreement shall enure to the benefit of and be binding upon all parties hereto, and their respective heirs, executors, administrators, successors, and assigns.
- 5. The Purchaser agrees that if Harmonized Sales Tax applies to this sale then such tax will be added to the Purchase Price.
- 6. The Purchaser agrees that the Auctioneer is not acting as the Purchaser’s agent, and the Auctioneer’s only obligation is to provide information relating to the auction and conduct the auction on behalf of the Town of Trinity.
- 7. I agree to the above terms.

Dated at the Town of Trinity, NL, on _____

Purchaser _____

Witness _____

Purchaser’s Solicitor _____

Vendor _____

Witness _____

Vendor’s Solicitor _____

Power of Attorney

KNOW ALL BY THESE PRESENTS that I/we, _____,
of _____, in the Province of _____
hereby appoint _____
of _____, in the Province of Newfoundland and
Labrador my/our attorney for us and in my/our name

1. To act for me/us in connection with the auction and sale of certain land by the Town of Trinity situate at 47 Fort Point Road, Town of Trinity, Trinity Bay, Newfoundland and Labrador, and in connection therewith,
2. To sign and execute on my/our behalf all forms, contracts, deeds, releases, instruments, undertakings and other documents, and
3. To make and deliver payments as required in connection therewith,

All pursuant to the procedures and conditions of Public Sale issued by the Town of Trinity and attached hereto which I/we acknowledge having read and agree to.

AND I/we hereby undertake to ratify everything which my/our said attorney shall do or purport to do by virtue of these presents.

IN WITNESS WHEREOF the Appointer(s) have hereunto their respective hands and seals subscribed and set at _____, on this _____ day of _____ 20 .

SIGNED, SEALED AND DELIVERED

by the Appointer(s), in the presence of: _____ O

_____ O