



**CITY OF HAMILTON**

**CITY MANAGER'S OFFICE**  
**Legal Services Division**

*and*

**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
**Economic Development Division**

<b>TO:</b> Mayor and Members General Issues Committee	<b>WARD AFFECTED:</b> Ward 11
<b>COMMITTEE DATE:</b> July 9, 2012	
<b>SUBJECT/REPORT NO:</b> Agreement to Accept Compensation, Section 30, <u>Expropriations Act</u> , 280 Fifty Road (NE corner Fifty Road and Highway 8), Stoney Creek, being Part 1 on Plan 62R-15996 (LS12014 / PED12132) (Ward 11)	
<b>SUBMITTED BY:</b> Don Fisher Acting City Solicitor Legal Services Division  Tim McCabe General Manager Planning and Economic Development Department	<b>PREPARED BY:</b> Helen Vastis (905) 546-2424, Ext. 2622  Keith Anderson (905) 546-2424, Ext. 7634
<b>SIGNATURE:</b>	

**SUBJECT: Agreement to Accept Compensation, Section 30, Expropriations Act, 280 Fifty Road (NE corner Fifty Road and Highway 8), Stoney Creek, being Part 1 on Plan 62R-15996 (LS12014 / PED12132) (Ward 11) - Page 2 of 6**

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**RECOMMENDATIONS:**

- (a) That a Full and Final Release resulting from the provisions of Section 30 of the Ontario Expropriations Act, for vacant lands known as part of Lot 2, Concession 2 in the geographic Township of Saltfleet, all shown as Part 1 on Plan 62R-15996, being PIN 17371-0016(LT), comprising an area of 0.394 hectare (0.974 acre), having a frontage of 41.224 metres (135.25 feet) along the east limit of Fifty Road, known municipally as 280 Fifty Road, in the former City of Stoney Creek, now in the City of Hamilton, as shown on Appendix "A" to Report LS12014 / PED12132 attached, in the amount of \$63,269.37, be approved and completed;
- (b) That the final settlement payment of \$63,269.37, being the difference between the settlement amount of \$99,769.37 (\$82,000 including the owner's legal and appraisal costs plus \$17,769.37 interest on unpaid land value) and the original Section 30 payment of \$36,500, be charged to Capital Budget Item 59259-3620374100 (SC-Storm Drainage Works-Watercourse) and that the City make a payment to Manfred Rudolph in Trust for the Owner, the sum of \$63,269.37 on the closing of this Agreement;
- (c) That an amount of \$12,000, as administrative compensation to the Real Estate Section for staff time on this transaction and appraisal fees, plus all Legal Service fees and disbursements, be funded from Capital Budget No. 3620374100 (SC-Storm Drainage Works-Watercourse) and credited to Account 45408-3560150200 (Property Purchases and Sales);
- (d) That the Mayor and Clerk be authorized and directed to execute all necessary documents in a form satisfactory to the City Solicitor.

**EXECUTIVE SUMMARY:**

This recommendation deals with the full and final settlement and payout of an outstanding Section 30, Ontario Expropriations Act acquisition of lands located at the north east corner of Fifty Road and Highway 8 in the former City of Stoney Creek. The land was required by the City in order to carry out watercourse improvements along Fifty Creek in the vicinity of Fifty Road and Highway 8.

The owner, Filomena Raso, agreed to sell her property to the City in September 2002 in accordance with Section 30 of the Expropriations Act, for a price of \$36,500, but would look for a final determination of compensation for this property taking from the Ontario

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Municipal Board (OMB) or if possible from a negotiated settlement directly with the City. This Report deals with that settlement.  
*Alternatives for Consideration – Page 5*

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS:**

- Financial:** Funding for the expropriation settlement and ancillary costs is available from Account Number 59259-3620374100 (SC-Storm Drainage Works-Watercourse).
- Staffing:** Other than Real Estate and Legal staff time, periodic maintenance of the parcel and watershed improvements will be required by Public Works staff.
- Legal:** Legal Services will be required to assist in the preparation of the necessary documents required to complete the transaction as set out herein.

**HISTORICAL BACKGROUND:**

The information/recommendations contained within this Report primarily affect Ward 11.

The subject land is vacant and 0.394 hectares (0.974 acre) in size, located at the north east corner of Fifty Road and Highway 8 in Stoney Creek. Acquisition of the property was required by the City for the purpose of watershed improvements. Specifically, Fifty Creek was in need of reconstruction / re-channelization both up and down stream of the intersection of Highway 8 and Fifty Road, utilizing natural materials and design techniques. In addition, culverts under the two roadways were to be replaced.

The former City of Stoney Creek began negotiations with the owner to purchase the property in 2000. Information was obtained from the Hamilton Region Conservation Authority indicating that the property was traversed by Watercourse No. 12 (also known as Fifty Creek) and that most of the entire property was subject to its Fill, Construction and Alteration to Waterways Regulation and fell within the 100 year regulatory flood plain, although there was a small triangular shaped area of tableland in the south east corner. Also, an independent appraisal was obtained at the time.

The new City of Hamilton took over the file in 2001 and on September 18, 2001, City Council in adopting Item 32, Report 01-029 of the Committee of the Whole, authorized and directed staff to commence expropriation proceedings to acquire the subject lands.

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However, in an effort for the City to obtain possession of the property as soon as possible in order to commence stream improvement works, it was suggested that a Section 30 agreement be considered. As a means to expedite the Expropriation process and to allow the City early possession of the subject lands, an owner may endorse a Section 30 Agreement of the Ontario Expropriations Act. Under the provisions of Section 30 of the Act, the owner consents to the acquisition of the lands by the expropriating body, the City of Hamilton, at an amount considered market value by the City, but allows the owner to apply to the OMB for the determination of the final compensation to which the owner is entitled under the Expropriations Act. This section eliminates the need for the requirement for necessary notices to be served upon the registered owners of the land affected, advertisement to the public of the Notice, the Hearing of Necessity, registration of an Expropriation plan, the making of the Official Offer and the passing of the various By-laws required under the Expropriations Act. Most importantly, this mechanism provides the City vacant possession of the land many months or years earlier than would be possible if the normal Expropriation process had to be completed. In this instance the property owner, Filomena Raso, agreed to execute a Property Purchase Agreement in accordance with Section 30 of the Expropriations Act, for consideration of \$36,500.

City Council, on October 23, 2002, approved Item 20, Committee of the Whole Report 02-035, approving the Section 30 of the Expropriations Act acquisition of the subject lands for the appraised value of \$36,500. Payment was made and possession taken on November 11, 2002 and the Transfer registered on January 7, 2003, as Instrument No. WE139349.

The City obtained a second, and more comprehensive land appraisal, specifically for expropriation purposes, in early 2003. The owner appears to have retained legal counsel in 2004, and City Legal and Real Estate staff subsequently negotiated with the owner through her lawyer. After a period of going back and forth negotiating the amount of compensation, a settlement was reached in the amount of \$82,000 including legal and appraisal fees, or \$67,500 representing the market value only. In addition, interest charges apply under the Expropriations Act on the outstanding market value of \$31,000, being the difference between the negotiated \$67,500 market value and the \$36,500 paid to the owner for the market value of the lands in November 2002. The interest charges to May 31, 2012 are calculated at \$17,769.37. Therefore, the total compensation for this settlement including interest is \$99,769.37 (\$82,000 + \$17,769.37). The outstanding amount to be paid to the owner to settle this matter is \$63,269.37, being \$99,769.37 less the \$36,500 paid to the owner in 2002.

Staff from Legal Services, and Real Estate support this Agreement as it represents a fair and reasonable settlement to this expropriation, and avoids the risk of having to mount an expensive defence at the OMB and to pay further amounts in legal, appraisal and planning fees, interest costs, and staff time.

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**POLICY IMPLICATIONS:**

The City of Hamilton, as an Expropriating Authority and as an Approving Authority under the Expropriations Act, is required to attempt to resolve issues of value of the lands or interests acquired by the City under the Expropriations Act. The proposed settlement deals with this obligation of the City and does not require any changes to City policy.

**RELEVANT CONSULTATION:**

- ◆ Ward Councillor
- ◆ Environment and Sustainable Infrastructure Division, Public Works

**ANALYSIS / RATIONALE FOR RECOMMENDATION:**

The City of Hamilton, as an Expropriating Authority and as an Approving Authority under the Expropriations Act, is required to attempt to resolve issues of value of the lands or interests acquired by the City under the Expropriations Act.

The recommended settlement amount net of costs (professional fees and interest), is \$22,500 higher than the City's appraised market value estimate (as of the 2003 effective valuation date). Considering this expropriation negotiation has been ongoing for ten years, and that professional fees and interest costs will only continue rising if the negotiation is drawn out, particularly if this matter results in an OMB arbitration hearing, in staff's opinion, the settlement recommended herein represents a reasonable and preferred solution from a business case perspective.

**ALTERNATIVES FOR CONSIDERATION:**

Staff could, if directed by Council, attempt to negotiate better financial terms than the agreed settlement, but any further delays could force the owner to request a formal OMB hearing and the City would not only risk the imposition of a larger monetary settlement than its appraised value, but would incur considerably higher legal and appraisal fees that would go with a hearing at the OMB and additional interest costs, not to mention additional staff time. Therefore, staff is recommending this settlement, given that this matter has been ongoing for over a decade and it is probable that further negotiation and likely arbitration at the OMB will result in total costs to the City that far exceed the total \$99,769.37 recommended settlement amount.

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**CORPORATE STRATEGIC PLAN:**

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

***Financial Sustainability***

- ◆ Delivery of municipal services and management capital assets/liabilities in a sustainable, innovative and cost effective manner.

***Environmental Stewardship***

- ◆ Natural resources are protected and enhanced.

***Healthy Community***

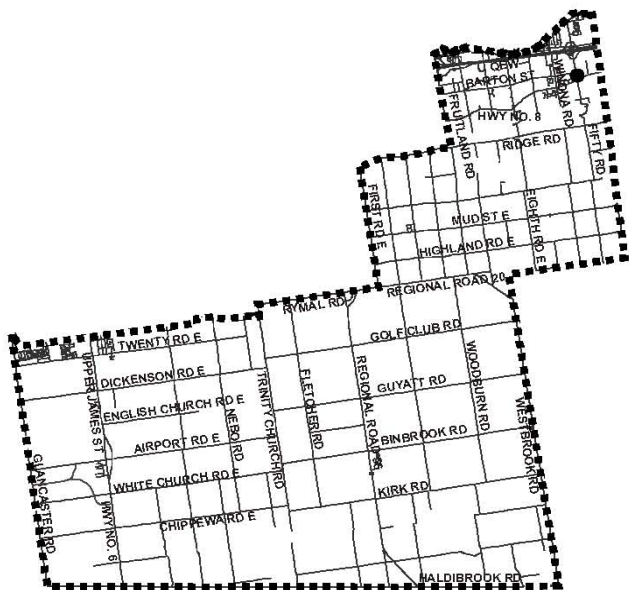
- ◆ Plan and manage the built environment.

**APPENDICES / SCHEDULES:**

Appendix "A" to Report LS12014 / PED12132 – Location Map



● Location of Subject Property



Ward 11 Key Map

N.T.S.

## Location Map



PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

File Name/Number:  
280FiftyRd

Date:  
May 22, 2012

Appendix "A"

Scale:  
N.T.S.

Planner/Technician:  
KA/KA

### Subject Property



280 Fifty Road