

CITY OF HAMILTON

PUBLIC WORKS DEPARTMENT
Operations and Waste Management Division

TO: Chair and Members Public Works Committee	WARD(S) AFFECTED: WARD 1
COMMITTEE DATE: September 4, 2012	
SUBJECT/REPORT NO: Proposed Permanent Closure and Sale of a Portion of Road Allowance Abutting 23 West Park Avenue, Hamilton (PW12063) - (Ward 1)	
SUBMITTED BY: John Mater, C.E.T. Acting General Manager Public Works Department	PREPARED BY: Marilyn Preston (905) 546-2424, Extension 4298
SIGNATURE:	

RECOMMENDATION:

That a portion of road allowance abutting the south side of 23 West Park Avenue, Hamilton, being Part 1 and 2 on Plan 62R-18937, as shown on Appendix B attached to Report PW12063, be permanently closed and sold to the owner of 23 West Park Avenue, Hamilton, subject to the following conditions:

- (a) That the City Solicitor be authorized and directed to prepare a by-law to permanently close the highway;
- (b) That the appropriate by-law be introduced and enacted by Council;
- (c) That the Economic Development and Real Estate Division of the Planning and Economic Development Department be authorized and directed to sell this closed highway for \$115,000, in accordance with a motion approved by Council on June 13, 2012, attached as Appendix C to Report PW12063;
- (d) That the City Solicitor be authorized and directed to register a certified copy of the by-law permanently closing the highway in the proper land registry office;
- (e) That the by-law permanently closing the highway does not take effect until a certified copy of the by-law is registered in the proper land registry office;
- (f) That the applicant register a reference plan under the Registry Act and that said plan be prepared by an Ontario Land Surveyor to the satisfaction of the Manager, Surveys and Technical Services Section and that the applicant deposit a

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reproducible copy of said plan with the Manager, Surveys and Technical Services Section;

- (g) That the City Solicitor be authorized and directed to register a certified copy of the by-law permanently closing the highway in the proper land registry office;
- (h) That the City retain an easement over Part 2 on Plan 62R-18937 to allow for future maintenance access to a combined sewage overflow pipe;
- (i) That the Public Works Department publish a notice pursuant of the City's intention to pass the by-law pursuant to City of Hamilton By-law 04-299 being a By-law to Establish Procedures, including the Giving of Notice to the Public, Governing the Sale of Land Owned by the City of Hamilton.

EXECUTIVE SUMMARY

The owner of 23 West Park Avenue, Hamilton, has been encroaching on the abutting road allowance for approximately fifty years. The encroachments, including a fence, patio and parking area are situated on lands which were thought to be needed for the McMaster Combined Sewer Outlet project. However, after reviewing the situation, it was determined that the project required only the southern portion of the road allowance, which will facilitate the sewer and remain open space.

Therefore, the lands will be offered to the owner of 23 West Park Avenue for \$115,000. The proposed sale price was approved by Council on June 13, 2012, in a motion attached as Appendix C to Report PW12063. As this solution will legalize the encroachments, provide green space and generate revenue, Operations and Waste Management Division staff does not oppose the permanent closure and sale.

Alternatives for Consideration - See Page 4

FINANCIAL / STAFFING / LEGAL IMPLICATIONS

Financial: The lands will be transferred to the owner of 23 West Park Avenue for \$115,000, as approved by Council on June 13, 2012, in a motion attached as Appendix C to Report PW12063.

Staffing: An agreement of purchase and sale regarding the subject lands has been negotiated by the Economic Development and Real Estate Division.

Legal: The City Solicitor will prepare the by-law to permanently close the subject lands and will register this by-law in the Registry Office once Council has approved it. The City Solicitor will complete the transfer of the subject lands to the abutting owner, pursuant to an Offer to Purchase which has been negotiated by the Economic Development and Real Estate Division.

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HISTORICAL BACKGROUND

The owner of 23 West Park Avenue has occupied a portion of an abutting road allowance with an extended yard, patio and driveway for several years. These encroachments were discovered during the preconstruction phase of the sewer extension from McMaster University which was proposed to cross the subject lands. As the City required only half of the lands for the works, the Economic Development and Real Estate Division has proposed closing and selling the northern portion of road allowance to the abutting owner to legalize the encroachments and generate revenue.

POLICY IMPLICATIONS

A by-law must be passed to permanently close the lands in accordance with the Municipal Act, 2001.

RELEVANT CONSULTATION

Notice of the proposed closure and sale was sent to 32 property owners within a 400 foot (121.9 metre) radius of the closure area attached as Appendix A to Report PW12063. Two respondents supported the closure and seven were opposed. Reasons for the opposition included concern that the lands might be developed in the future for student housing, a possible decrease in neighbourhood property values and a desire to keep the lands as open space for the public. However, as the applicant does not plan to develop the lands any further than the existing encroachments and as the remainder of the road allowance will remain green space, staff does not oppose the closure.

The following City staff were consulted on this application:

- Planning and Economic Development Department: Development Engineering, Building Services, Economic Development and Real Estate and Planning
- Public Works Department: Environment & Sustainable Infrastructure, Transportation, Energy & Facilities and Operations & Waste Management
- Hamilton Emergency Services
- Corporate Services Department: Budgets and Finance Division
- Ward Councillor

The Economic Development and Real Estate Division advise that the City must retain an easement over Part 2 on Plan 62R-18937 to allow for future maintenance access to a combined sewage overflow pipe.

Comments were requested from Public Utilities including Horizon Utilities, Hydro One, Bell and Union Gas. Bell has advised that they will require easement protection.

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ANALYSIS / RATIONALE FOR RECOMMENDATION

As the lands have been declared surplus to the City's needs and as the lands will be sold for \$115,000.00 to the abutting owner, as approved by Council on June 13, 2012, in a motion attached as Appendix C to Report PW12063, staff does not oppose the closure and sale.

ALTERNATIVES FOR CONSIDERATION

The City could remove the encroachments at the owner's expense or continue to allow the owner to encroach, creating some risk to the City. In either of these situations, the City would not receive the revenue of \$115,000.

CORPORATE STRATEGIC PLAN

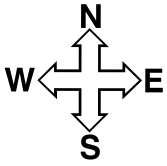
Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

Healthy Community

- ◆ Plan and manage the built environment

APPENDICES / SCHEDULES

Appendix A - Location Plan
Appendix B - Aerial Drawing
Appendix C - Notice of Motion



Hamilton
Public Works Department

LOCATION PLAN

PROPOSED CLOSURE OF
A PORTION OF ROAD
ABUTTING

23 WEST PARK AVENUE

CITY OF HAMILTON
PUBLIC WORKS DEPARTMENT

LEGEND

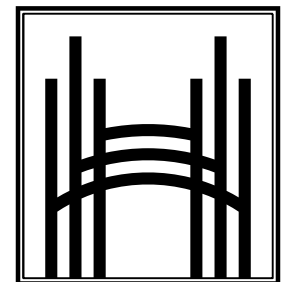
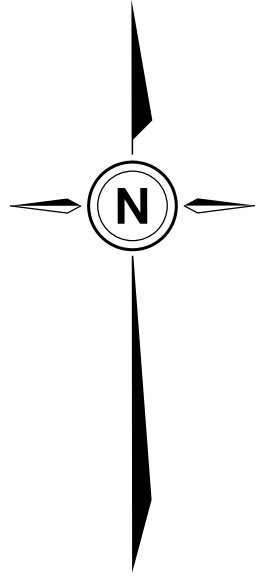


SUBJECT LANDS

DATE: July 18, 2012

Not to Scale

REFERENCE FILE NO : PW12__



Hamilton

Sketch of Proposed Closure 23 WEST PARK AVE - HAMILTON, ON

Surveys & Technical Services
Public Works Department

APPENDIX B REPORT PW12063

SCALE 1:500
07-18-2012
Sketch By: MM

CITY OF HAMILTON MOTION

Committee Date: June 4, 2012

MOVED BY COUNCILLOR MCHATTIE

SECONDED BY COUNCILLOR

9.1 Sale of Part of King Street as shown on Registered Plan No. 904, City of Hamilton, designated as Parts 1 & 2 on 62R-18937, being Part of PIN 17474-0412 (LT) to M. Mintz

Whereas the subject property, legally known as Part of King Street, Registered Plan No. 904, City of Hamilton, designated as Parts 1 & 2 on Plan 62R-18937, being Part of PIN 17474-0412 (LT), forms part of the King Street unopened road allowance and interest has been expressed by the adjoining owner, Mr. M. Mintz, to acquire said lands; and

Whereas a Road Closure Application had been initiated by the City of Hamilton in 2008 to formally stop up, close and sell the land designated as Parts 1 & 2 on Plan 62R-18937; and

Whereas the Real Estate Section of the Economic Development Division of the Planning and Economic Development Department had been in negotiations with Mr. M. Mintz as of August 2009 on the disposition of the land designated as Parts 1 & 2 on Plan 62R-18937 for an initially appraised market value of \$115,000 determined through an internal in-house appraisal; and

Whereas the Real Estate Section of the Economic Development Division of the Planning and Economic Development Department in accordance with By-law 04-299, "Procedural By-law for the Sale of Land" updated the internal in-house appraisal to a date which is within one year of an intended sale. The estimated subject's market value of the land as of April 2012 is now \$185,000; and

Whereas, the market value of land and houses in the Ainslie Wood – Westdale area has artificially increased due to the widespread speculation in student housing, and the change in value identified by the City in this case is related to the sale of three homes in the vicinity of this property, directly resulting in the increased value of the land; and

Whereas selling City land at significantly below market value to private interest is not in conformity to City policies unless such an arrangement is deemed by City Council to be in the best public interest; and

Whereas, Mr. Mintz has been maintaining the City property adjacent to his house for the past 40 years, and

Whereas Mr. M. Mintz, has requested the acquisition of Part of King Street as shown on Registered Plan No. 904, City of Hamilton, designated as Parts 1 & 2 on Plan 62R-18937, being Part of PIN 17474-0412 (LT) at the sale price of \$115,000 pursuant to the City of Hamilton's original offer of August 2009 justified as Mr. M. Mintz has maintained and utilized the subject land for over 40 years; and

Whereas the Council of the City of Hamilton is empowered under Section 34 of the *Municipal Act*, 2001, S.O. 2001, c.25 as amended, to permanently close any highway or part of a highway.

Now Therefore be it Resolved:

- (a) That the Real Estate Section of the Economic Development Division of the Planning and Economic Development Department be authorized and directed to dispose of Part of King Street as shown on Registered Plan No. 904, City of Hamilton, designated as Parts 1 & 2 on 62R-18937, being Part of PIN 17474-0412 (LT), on an as is, where is basis, to the adjoining owner, Mr. M. Mintz for \$115,000, subject to;
 - (i) An Offer to Purchase (Highway Closure) for the sale of Part of King Street as shown on Registered Plan No. 904, City of Hamilton, designated as Parts 1 & 2 on 62R-18937, being Part of PIN 17474-0412 (LT), be executed to the satisfaction of the City Solicitor prior to the Road Closure application proceeding to Committee and Council for consideration;
 - (ii) The Road Closure Application initiated by the City of Hamilton to formally stop up, close and sell the land designated as Parts 1 & 2 on Plan 62R-18937 receiving final approval.
- (b) The General Manager, Public Works, be authorized and directed to bring forth the Road Closure Report for Committee and Council's consideration upon execution of the Closure referred in a(i) above.
- (c) That the City Solicitor be authorized and directed to complete the real estate transaction on the terms and conditions set out herein.

- (d) That the Mayor and City Clerk be authorized and directed to execute all necessary documents in a form satisfactory to the City Solicitor.