



CITY OF HAMILTON
PUBLIC WORKS DEPARTMENT
Engineering Services Division

TO:	Chair and Members Public Works Committee
COMMITTEE DATE:	September 19, 2016
SUBJECT/REPORT NO:	Proposed Permanent Closure and Sale of a Portion of Public Unassumed Alley Abutting 4 Mountain Avenue, Hamilton (PW16078) (Ward 1)
WARD(S) AFFECTED:	Ward 1
PREPARED BY:	Marilyn Preston (905) 546-2424, Extension 4298
SUBMITTED BY:	Gary Moore, P.Eng. Director, Engineering Services Division Public Works Department
SIGNATURE:	

RECOMMENDATION

- (a) That a portion of the east/west public unassumed alleyway abutting 4 Mountain Avenue, Hamilton, be permanently closed and sold to the owner of 4 Mountain Avenue, Hamilton, as shown on Appendix "A", attached to Report PW16078 (the "Subject Lands"), subject to the following conditions:
- (i) That the applicant makes an application to the Ontario Superior Court of Justice, under *Section 88 of the Registry Act, R.S.O. 1990*, for an order to permanently close the Subject Lands;
 - (ii) That the General Manager, Public Works or his designate sign the appropriate documentation to obtain the order;
 - (iii) That the documentation regarding the application to the Ontario Superior Court of Justice be prepared by the applicant, to the satisfaction of the City Solicitor;
 - (iv) That the applicant deposit a reference plan under the *Registry Act* and that said plan be prepared by an Ontario Land Surveyor to the satisfaction of the Manager, Geomatics and Corridor Management Section and that the applicant deposit a reproducible copy of said plan with the Manager, Geomatics and Corridor Management Section;
- (b) That provided the application to the Ontario Superior Court of Justice to permanently close the Subject Lands is approved:

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OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

- (i) That the City Solicitor be authorized and directed to prepare the by-law to permanently close the highway;
- (ii) That the appropriate by-law be introduced and enacted by Council;
- (iii) That the Economic Development and Real Estate Division of the Planning and Economic Development Department be authorized and directed to sell the Subject Lands to the owner of 4 Mountain Avenue, Hamilton, in accordance with the Procedural By-law for the Sale of Land, By-law No. 04-299 for a nominal fee;
- (iv) 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, upon confirmation from the Public Works Department that all applicable fees and costs associated with the application have been paid by the applicant;
- (v) 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;
- (vi) That the Public Works Department publish a notice 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.
- (vii) That the applicant enters into an appropriate easement agreement with Bell Canada.

EXECUTIVE SUMMARY

The owner of 4 Mountain Avenue, Hamilton has been using a portion of the east/west public unassumed alley abutting the property as a driveway for many years. In order to obtain permanent access to the alley, the owner has submitted an application to permanently close and purchase the portion of alley. As all abutting property owners are in favour of the proposal, staff support the request to permanently close and purchase the portion of alley.

Alternatives for Consideration – See Page 4

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

- Financial:** The applicant has paid the Council approved user fee of \$4281.35. The Subject Lands will be transferred to the owner of 4 Mountain Avenue, Hamilton, for a nominal fee, in accordance with the City's policy regarding the sale of public unassumed alleyways abutting residential properties.
- Staffing:** An agreement to purchase the Subject Lands will be negotiated by the Economic Development and Real Estate Division.

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Legal: The City Solicitor will prepare a by-law to permanently close the Subject Lands and will register it in the Registry Office once Council has approved the by-law. The City Solicitor will complete the transfer of the Subject Lands to the owner of 4 Mountain Avenue, Hamilton, pursuant to an agreement of purchase and sale or Offer to Purchase as negotiated by the Economic Development and Real Estate Division.

HISTORICAL BACKGROUND

The owner of 4 Mountain Avenue, Hamilton has been using a portion of the east/west public unassumed alley as a driveway for several years. As no other property owners abutting the alley have any interest in the alley and as the owner is seeking to ensure access to the alley on a permanent basis, the owner of 4 Mountain Avenue, Hamilton has submitted an application to permanently close and purchase the lands.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

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

RELEVANT CONSULTATION

The following City Departments and Divisions and Public Utilities were provided with a copy of this application and invited to provide comments:

- Planning and Economic Development Department: Development Engineering, Building Services, Economic Development and Real Estate and Planning
- Public Works Department: Engineering Services, Hamilton Water, Operations and Corporate Assets and Strategic Planning
- Hamilton Emergency Services
- Corporate Services Department: Budgets and Finance
- Mayor and Ward Councillor
- Bell Canada, Horizon Utilities and Union Gas

No negative comments were received from any City Departments and Divisions. Bell Canada has advised that they will require easement protection for their services located within the closure limits.

Notice of the proposal was sent to property owners within a 400' (121.9 metre) radius of the Subject Lands, as shown on Appendix "B", attached to report PW16078). In this instance, there were 131 notices sent and the results are as follows:

In favour: 4 Opposed: 2 No comment: 125

The two residents opposed to the proposal are not abutting the Subject Lands and gave no reasons for their objections.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

The permanent closure and sale of the Subject Lands will divest the City of lands which are surplus to the City's needs and which will eliminate potential future maintenance and liability associated with the City's continued ownership of the Subject Lands. Selling the alley to the owner of 4 Mountain Avenue, Hamilton, will result in the installation of a residential driveway which will reduce on street parking congestion in the area.

ALTERNATIVES FOR CONSIDERATION

The application to close and sell the Subject Lands could be denied, in which case the Subject Lands would remain a public unassumed alleyway. However, the City does not currently maintain the Subject Lands and transferring the Subject Lands to private ownership will relieve the City of any future liability issues.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Built Environment and Infrastructure

Hamilton is supported by state of the art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

APPENDICES AND SCHEDULES ATTACHED

Appendix A: Aerial Drawing

Appendix B: Location Plan