



**CITY OF HAMILTON**  
**PUBLIC WORKS DEPARTMENT**  
**Engineering Services Division**

<b>TO:</b>	Chair and Members Public Works Committee
<b>COMMITTEE DATE:</b>	October 31, 2016
<b>SUBJECT/REPORT NO:</b>	Proposed Permanent Closure and Sale of a Portion of Public Unassumed Alley Abutting 131 Ivon Avenue, Hamilton (PW16091) (Ward 4)
<b>WARD(S) AFFECTED:</b>	Ward 4
<b>PREPARED BY:</b>	Marilyn Preston (905) 546-2424, Extension 4298
<b>SUBMITTED BY:</b>	Gary Moore, P.Eng. Director, Engineering Services Public Works
<b>SIGNATURE:</b>	

**RECOMMENDATION**

- (a) That a portion of the east/west public unassumed alleyway abutting 131 Ivon Avenue, Hamilton, be permanently closed and sold to the owner of 131 Ivon Avenue, Hamilton, as shown on Appendix A, attached to Report PW16091 (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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- (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 131 Ivon 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.

**EXECUTIVE SUMMARY**

The owner of 131 Ivon Avenue, Hamilton has applied to permanently close and purchase a portion of public unassumed alley running north/south at the rear of their property as well as at the rear of 127 and 129 Ivon Avenue and 130 and 132 Julian Avenue, Appendix C to Report PW16091. The alley runs from Roxborough Avenue to the rear of 131 Ivon Avenue and is the only way to access the garage behind 131 Ivon Avenue. All other properties abutting the Subject Lands have driveways to access their garages. The closure and sale will not impact the surrounding properties as the remaining portion of alley is encumbered and un-accessible and purchasing this portion of alley is the only way to ensure access to the property owner's garage. Staff support the permanent closure and sale of the alley to the owner of 131 Ivon Avenue, Hamilton.

***Alternatives for Consideration – See Page 4***

**FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

Financial: The applicant has paid the Council approved user fee of \$4197.40. The Subject Lands will be transferred to the owner of 131 Ivon Avenue, Hamilton, for a nominal fee, in accordance with the City's policy regarding the sale of public unassumed alleyways abutting residential properties.

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**Staffing:** An agreement to purchase the Subject Lands will be negotiated by the Economic Development and Real Estate Division.

**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 131 Ivon 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 131 Ivon Avenue has a rear garage that can only be accessed from the public unassumed alley running north/south from Roxborough Avenue. In order to ensure access to the garage, the owner of 131 Ivon Avenue has made application to permanently close and purchase the portion of alley leading to the garage.

### **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

There were no objections 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 PW16091. In this instance, there were 138 notices sent and the results are as follows:

In favour: 14                      Opposed: 9                      No comment: 115

Those opposed to the proposal that are not abutting the Subject Lands stated the following reasons for their objections:

- “Access should be left for emergency vehicles”
- “Big inconvenience for surrounding homes”

Those opposed to the proposal that are abutting the Subject Lands stated the following reasons for their objections:

- “If the alleyway is to be sold, I want to purchase my fair portion”
- “I am opposing any sale or closure as it is going to affect access”
- “The alley in question begins adjacent to my property. I want to execute my right to purchase the portion of alley adjacent to my property”

All of the abutting neighbours opposed to the proposal have driveways and alternate access to their garages. Under the *Municipal Act, 2001*, the City is not required to offer abutting owners their portion of the Subject Lands.

## **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.

In order for the owner of 131 Ivon Avenue to ensure access to the garage at the rear of the property, the Subject Lands would have to be permanently closed and sold to the owner of 131 Ivon Avenue.

## **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.

Portions of The Subject Lands could be offered to all abutting property owners. However, that would not guarantee permanent access to the rear garage at 131 Ivon Avenue which is the purpose of the application.

## **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.

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**APPENDICES AND SCHEDULES ATTACHED**

Appendix A: Aerial Drawing

Appendix B: Location Plan

Appendix C: Location Pictures