



CITY OF HAMILTON
PUBLIC WORKS DEPARTMENT
Engineering Services Division

TO:	Chair and Members Public Works Committee
COMMITTEE DATE:	June 13, 2016
SUBJECT/REPORT NO:	Proposed Permanent Closure and Sale of Portions of Public Unassumed Alleys Abutting 222 Barton Street East, 263 and 265 Wellington Street North, Hamilton (PW16053) (Ward 2)
WARD(S) AFFECTED:	Ward 2
PREPARED BY:	Marilyn Preston (905) 546-2424, Extension 4298
SUBMITTED BY:	Gary Moore, P.Eng Director, Engineering Services Public Works Department
SIGNATURE:	

RECOMMENDATION

- (a) That the application of 467052 Ontario Limited, to permanently close and purchase portions of public unassumed alleys abutting 222 Barton Street East, 263 and 265 Wellington Street North, Hamilton, as shown on Appendix "A", be approved, 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 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 any required easement agreements with public utilities.

EXECUTIVE SUMMARY

An application has been received from 467052 Ontario Limited to purchase two portions of public unassumed alley to facilitate a new development at the south/west corner of Barton Street East and Wellington Street North. The applicant owns property abutting all sides of the Subject Lands and the buildings have been demolished to facilitate redevelopment of the lands. Notice of the proposal was circulated for comment to the neighbourhood and there were several negative responses received from people who use the alleys to access the rear of their properties. Although these property owners are enjoying the use of the alleys, the alleys are public unassumed and the City is not required to guarantee access from a public unassumed alley to any property unless it is the sole access. In this instance, the north/south public unassumed alley can still be accessed from Robert Street at the southern end of the alley. As there is a major development planned for this location and as the applicant owns property abutting all sides of the Subject Lands, staff support closing the portions of alleys and transferring them to the applicant.

Alternatives for Consideration – See Page 5

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 applicant at fair market value, in accordance with the City's policy regarding the sale of public unassumed alleyways abutting non-residential properties.
- 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 applicant, pursuant to an agreement of purchase and sale or Offer to Purchase as negotiated by the Economic Development and Real Estate Division.

HISTORICAL BACKGROUND

467052 Ontario Limited has purchased 222, 226 and 228 Barton Street East and 261, 263 and 265 Wellington Street North at the south/west corner of Barton Street East and Wellington Street North. The company has made application to purchase portions of public unassumed alleys abutting their properties to facilitate a new development at that location.

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, Horizon Utilities and Union Gas

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Community Planning staff advise as follows:

“Existing alleys will be maintained and, where feasible, extended to serve residential and commercial development. The City may approve alley closures only where development adjacent to the alley can be serviced from a public street without compromising the urban design objectives of this plan, particularly as they relate to streets and heritage buildings.”

Transportation staff advise as follows:

“As the alleyway only exits onto Wellington Street we will need to maintain the 26.213 metres ROW as per the City of Hamilton’s Urban Official Plan.”

No negative comments were received from any City Departments and Divisions.

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”.

In this instance there were 65 notices sent and the results were as follows:

In favour: 3 Opposed: 16 No comment: 1

Those opposed to the proposal were not in favour of closing the alleys as they use the alleys to access the rear of their properties. However, access to the north/south alley will remain from the south end of the alley at Robert Street.

The owner of a large property located to the west of the proposed development abuts a small portion of both the east/west and north/south alley and they have responded as follows:

“We own approximately 5.5 acres of land abutting the proposed unassumed alley closures. This includes lands directly adjacent to the western and southern portions of the unassumed alley proposed to be closed. The lands, as well as the alley lands proposed for closure, are located in the Ferguson-Wellington Corridor of the West Harbour (Setting Sail) Secondary Plan for the City. Our lands are currently used primarily for additional Hamilton General Hospital parking; however, the future long term use of these lands as designated on Schedule M-2 of the Settling Sail Secondary Plan is mainly for mixed use development. Schedule M-2 currently continues to incorporate the unassumed alley access to Wellington Street North. Moreover, Policy A.6.3.3.2.9 of Setting Sail includes a policy which favours maintaining existing alleyways to serve residential and commercial development. Pedestrian connectivity is an important issue to a number of planning objectives including supporting public transit.

Approval of alley closures must avoid compromising planning and urban design objectives of the Plan. In accordance with the City's long term planned vision, this existing access opportunity from Wellington Street North should be maintained. It would be short sighted to foreclose any options through this closure request. This

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is particularly the case where the Ontario Ministry of Transportation Transit-Supportive Guidelines encourages mid-block pedestrian connections to reduce walking distances to transit and new street connections to enhance walkability. As such, and as indicated on the attached Notice, we are opposed to the proposal.

ANALYSIS AND RATIONAL 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. Property owners who have been enjoying the use of the City owned, public unassumed alley, running north/south will still have access to the alley from the south end at Robert Street.

ALTERNATIVES FOR CONSIDERATION

The application to close and sell the Subject Lands could be denied, in which case the Subject Lands would remain public unassumed alleyways. 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 while facilitating development at the intersection of Barton Street East and Wellington Street North.

ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN

Strategic Priority #1

A Prosperous & Healthy Community

WE enhance our image, economy and well-being by demonstrating that Hamilton is a great place to live, work, play and learn.

Strategic Objective

- 1.1 Continue to grow the non-residential tax base.
- 1.3 Promote economic opportunities with a focus on Hamilton's downtown core, all downtown areas and waterfronts.

APPENDICES AND SCHEDULES ATTACHED

Appendix A: Aerial Drawing

Appendix B: Location Plan