

PUBLIC LANEWAY INITIATIVE

Monday, June 26, 2017

Dear Mayor Eisenberger, and City Councillors,

I am writing on behalf of the **Public Laneway Initiative**, an informal neighbourhood association (with 650+ members) that has been recognized by the City of Hamilton, and financially supported through a *Neighbourhood Engagement Matching Grant*.

We are begging you to preserve the Public Laneway as an important public space that is part of our daily lives, and a cherished part of the history and culture of our community.

We strongly urge you to vote AGAINST the application seeking permanent closure and sale of the Public Laneway.

Alternatively, we urge you to table the proposed closure so that ...

- (a) the Municipal Heritage Committee may consider the impact of closing the Public Laneway (within the Cross-Melville Heritage Conservation District), rather than impose “retroactive approval”, and/or**
- (b) the Planning Committee may consider changes to the Dundas Zoning By-Law to increase minimum lot frontage to prevent a lot severance and infill construction within the Cross-Melville Heritage Conservation District (Zone RH-1) as a consequence of privatizing the Public Laneway.**

Since Councillor Arlene Vanderbeek has tried on many occasions to undermine the credibility of our neighbourhood organization, a list of our members is included.

I live in Dundas on Parkview Row, and just like the many others on our list, all of our properties will be *prejudicially affected* if the Public Laneway is closed. We want to make sure you understand this opens the door for us to take legal action against the City, should you vote to close it.

When I moved to Dundas, almost a quarter century ago, my decision was influenced, in large part, by the character of the neighbourhood, and the Public Laneway is an essential element.

The Public Laneway has been part of our Dundas community since 1857. It has been in continuous use by Dundas residents for 160 years. It's older than Canada!

The Public Laneway is not like some other alleys in Hamilton that have fallen into disuse, or are filled with garbage, or have become overgrown with weeds.

The Public Laneway is unlike any other alley in the City. It's part of our history, right in the heart of the *Cross-Melville Heritage Conservation District*, and deep in the hearts of people who live in Dundas.

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One of our supporters, Shirley Carpenter who lives on Sydenham, has lived her entire life in Dundas. Now in her mid 80's, she still has fond memories from her childhood of being pulled over the snow on a toboggan through the Public Laneway. Many Dundas residents have similar stories.

Hamilton's Official Plan

The Public Laneway is part of the fabric of our community. It provides connectivity and flow through the neighbourhood for children, parents, seniors, joggers, cyclists, dog-walkers, and so on. It is part of our safer, more walkable, more bikeable community.

In fact, according to the City of Hamilton's *Official Plan*, the Public Laneway satisfies key urban design goals to:

3.3.1.1 "Enhance the sense of community pride and identification by maintaining unique places."

3.3.1.3 "Create pedestrian oriented places that are safe, accessible, connected, and easy to navigate for people of all abilities."

Heat Maps showing widespread opposition to proposed closure of Public Laneway

I'd like to draw your attention to the various maps of Dundas we have included at the end of this letter, showing the locations of our 650+ members, with each person represented by a red dot, or as a heat map. Interactive versions of these Google maps are available online, enabling you to zoom in/out and explore the neighbourhood.

<http://publiclaneway.ca/map/>

Dundas is a valley town. In much the same way that water flows down from the escarpment, these Dundas residents flow through the Public Laneway, on their way to churches, schools, daycares, parks, to visit with neighbours, ... and to visit shops in our thriving downtown Dundas.

The red regions on these maps show the "watershed" of the Public Laneway. You can see the overwhelming majority of people in the neighbourhood use it on a regular basis and are therefore opposed to closing and privatizing the Public Laneway.

Public Space

The voices of all these 650+ Dundas residents must be heard, and must be considered when determining the fate of the Public Laneway.

<http://publiclaneway.ca>

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If there was an application to privatize the *Dundas Driving Park*, the City would be obligated to consider more than just a few people who own property abutting the park.

The same principle is true of another important public space, ... the Public Laneway.

Unwittingly Enabling Property Severance

What other harms might exist if the Public Laneway is privatized? According to the *Dundas Zoning By-Laws*, properties in Zone RH-1 (the Cross-Melville Heritage Conservation District) are required to have an unusually large minimum frontage (21m). The intended purpose was to prevent lots from being severed and new homes being built inside the Heritage District.

If you sell the Public Laneway to "the applicant" for \$2 and he adds it to his property at the corner of Sydenham and Victoria, the frontage on Victoria Street will become longer, ... just long enough to give him the ability to sever his property and build a brand new house within the heritage district, among the other homes built in the 1800's.

And it doesn't matter if the applicant doesn't want to sever his property, because the next owner will be able to. You cannot let this happen.

Legal Petition Ignored

The City conducted a formal public consultation last summer, actively soliciting opinions from Dundas residents.

I spoke to Marilyn Preston at the time, and she assured me the City wanted to hear from anyone who was interested, by email, phone, letter, or on the City's official form.

So we canvassed the neighbourhood in the brief time available, and before the deadline (August 4, 2016), we delivered **209 signatures** of residents opposed to closing the Public Laneway, using the City's official consultation form. Many people included handwritten notes, explaining their opposition in detail.

At the time, Marilyn Preston told me this level of opposition was "completely unprecedented", and it would take a long time to process all this feedback, and to put everyone on a map that would be included in her final staff report.

Well, you've seen her Public Works report. There is no map; there is not even any mention of the **209 signatures** from people opposed. It is irresponsible to conduct a public consultation and then to ignore the carefully considered responses from the community. It's undemocratic!

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More than a few people are wondering whether the applicant, who is also an influential sewer contractor, with more than \$9.2M in Public Works contracts, may have received preferential treatment from friends in Public Works. Something stinks!

Thankfully, legislative clerk Lauri Leduc accepted our 209 signatures of people opposed and recognized it as a legal and valid petition.

You asked for this public opinion, and now you must consider it. You must respect the opinions expressed in this petition with 209 signatures. We urge you to vote against this application.

The Applicant is not a citizen of Hamilton

It is worth noting that the "applicant" in this proposed transaction is not even a citizen of Dundas or even Hamilton. The "applicant" is actually a property development corporation (**1612464 Ontario Ltd**) that also owns a number of other properties in Dundas, including 31 Cross St, the Dundas Post Office, and several more.

Why should the commercial interests of such a corporation be supreme over the widespread opposition of the community?

Serial Rule Breaker

The owner of this corporation is well-known in the neighbourhood as a serial rule breaker, who has a habit of acting first then seeking retroactive permission. This bad behaviour should not be rewarded by the City with a sweetheart deal, giving him land for \$2 when the fair market value is easily \$100,000 or more.

1) This whole controversy began when the applicant paved public land without permission, and then erected an illegal fence, blocking passage by the public. Hundreds of people in the neighbourhood were upset and vocal in their opposition because the applicant had effectively stolen the Public Laneway. Numerous complaints (50+) were made to Municipal By-Law Enforcement, but no action was taken. Only afterwards did he submit the application currently under consideration.

2) There's more: At 63 Sydenham St, he made changes contrary to heritage rules, but heritage enforcement was blocked by Councillor Vanderbeek, who told the local heritage committee (falsely) that they had no authority. (minutes of meeting, Aug 11, 2016)

3) At 31 Cross St, he made changes to the house that were contrary to heritage rules and destroyed evidence. This time the heritage committee recommended a fine. (reported in Dundas Star, March 23, 2017, "Heritage committee urges city to levy 'substantial fine' for flouting of rules").

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4) In 2015, his company that works for the City, *LM Enterprises*, pleaded guilty in court and was fined \$15,000 for violating public safety rules, ... digging first, without doing a locate, striking a gas pipeline, endangering lives, leaving 27 homes & businesses without gas. (Technical Standards & Safety Authority, May 1, 2015)

5) And recently, the City's Building Dept posted an Order to Comply notice on the Dundas Post Office, for construction without a permit. (Order 17-107064-00 EN, March 24, 2017)

When will this end? Many people in Dundas are growing weary of the applicant's disruptive activities in our community. Please help us save the Public Laneway. You must vote against this application.

Closure of Public Laneway not justified by applicant

At the recent meeting of the Public Works Committee (Monday, June 19, 2017), the corporation that applied to purchase the Public Laneway was represented by its owner. This man spoke after more than 30 delegations from neighbours, who gave detailed arguments for their opposition to closing the Public Laneway. Remarkably, the applicant's spokesman gave no real justification or rationale behind the proposed alley closure. Instead, he simply said he wanted to prevent people walking through the Public Laneway because he was tired of "picking up dog shit". That's it. That's the real reason that City Council is being asked to consider privatization of this beloved public resource. (reported on CHCH TV, June 19, 2017, <http://www.chch.com/dundas-alleyway-dispute/>)

Arlene's Red Herring — Safety

Many of you will have read the recent commentary in the Hamilton Spectator (Friday, June 23), in which Andrew Dreschel wrote, "the safety issue is a red herring which, somewhat suspiciously, only surfaced after residents spoke out against the sale" of the Public Laneway. We agree that Councillor Arlene Vanderbeek's safety concern is a *red herring*.

When I met with Arlene in her office late last summer (August 15, 2016) , we spoke for more than 2 hours about the Public Laneway. I explained the widely held view that Sydenham Street is quite dangerous because of the busy traffic including heavy trucks going up and down the escarpment, whereas the Public Laneway is a much safer route preferred by most people. I asked if we really needed to have a traffic engineer do a safety study to confirm this, since it was so obvious to everyone in the neighbourhood. After all, the Public Laneway has been used continuously for 160 years and there has never been anyone injured. It's a peaceful, walkable, bikeable alley.

Arlene dismissed my argument, saying that she could get her own traffic study that would come to whatever conclusion she wanted.

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A few months later, Councillor Vanderbeek made a big deal over a St. Augustine “School Travel Plan” (Nov 3, 2016). I was walking through the Public Laneway that morning, and I saw Principal Marc Trotta and a few others with clipboards. This was by no means any proper kind of safety study.

This one page document, written in point form, simply says “Pedestrians use alleyway as shortcut” but “Principal not promoting space as a walking path”. That’s it! In contrast, Sydenham was highlighted for “vehicle speed & aggressive driving”.

Councillor Vanderbeek has publicly misrepresented the nature and significance of this “Travel Plan” and her partners in this public deception, the Dundas Star News, editor Gordon Cameron, and reporter Craig Campbell were formally reprimanded by the National NewsMedia Council for a headline that “was misleading and a breach of journalistic standards”, (Dundas Star News, Nov 9, 2016; Reprimand, Feb 3, 2017).

We agree with Andrew Dreschel’s suggestion: “Better for council to kibosh the sale or, at the very least, press the pause button.”

Problem Solved! No remaining safety concern related to Public Laneway

Public Works recently installed 4 new signs discouraging schoolchildren from using the Public Laneway (Feb 28, 2017). These signs have been so successful, children no longer walk through the Public Laneway. As a consequence, whatever safety concern may have existed has now been completely eliminated.

Closing the Public Laneway would provide no incremental benefit regarding safety.

In fact, through Councillor Arlene Vandbeek’s recent initiatives, more pedestrians are being pushed onto the much more dangerous Sydenham St, where children have been injured (e.g., “child hit by motorcycle”, Dundas Star News, September 7, 2017). We believe the City’s liability has been significantly increased due to risk to pedestrians and cyclists.

Legal Appeal in Ontario Superior Court

If City Council votes in favour of the permanent closure of the Public Laneway, ... the first step will be an application to the Ontario Superior Court of Justice, asking for permission to close the Public Laneway, under Section 88.(1)(c) of the *Land Registry Act*. According to Section 88.(2) “any person affected” may appeal.

We want to make sure the City understands there are more than 650 property owners who will be *prejudicially affected* if the Public Laneway is permanently closed, and this provides just one of several avenues for legal action against the City.

The City should not underestimate the depth of our resolve in opposing the closure of the Public Laneway.

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Therefore, ...

We strongly urge you to vote AGAINST the application seeking permanent closure and sale of the Public Laneway.

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Sincerely,

A handwritten signature in black ink, appearing to read 'David Jones', with a stylized, cursive script.

David Jones, ... for the **Public Laneway Initiative**

CITY HALL

Crunch time for Dundas lane controversy

The city is on the verge of selling a portion of an alley, outraging some neighbours



ANDREW DRESCHEL

The Hamilton Spectator

It takes barely a minute to walk the shady public laneway that connects Alma and Victoria streets in old Dundas.

But for more than a year, the humble foot-path has been the focus of a bitter tug-of-war between area residents, the city, and Dundas Coun. Arleen VanderBeek.

After 160 years of continuous use, the city is on the verge of selling a portion of the lane to an adjacent homeowner. To the chagrin of several hundred residents, that means the whole length will be permanently closed to strollers and cyclists.

This week the public works committee, with VanderBeek's support, unanimously voted to transfer part of the lane to homeowner Len Medeiros who will almost certainly seal it off for privacy reasons.

The decision goes before council for approval next Wednesday, June 28. If councillors follow their usual practice of acquiescing to the wishes of ward councillors on issues directly related to their turf, VanderBeek will carry the day. If so, that's a pity. Better for council to kibosh the sale or, at the very least, press the pause button.

The laneway is considered an unassumed alley, meaning the municipality owns it but has no legal obligations to maintain it other

than for emergencies. The city doesn't have a comprehensive strategy for managing unassumed alleys, but standard practice is to off-load them to avoid potential future maintenance or liability.

But that boilerplate approach breaks down in this case, which is wrapped up in heritage and community values.

The controversy erupted in spring 2016 when Medeiros, whose Sydenham Road home backs onto the lane, paved a portion of the gravel path and erected a fence across it without permission. A few weeks later he applied to purchase the land from the city, which includes paying a fee of \$4,637.

There's nothing unusual about Medeiros's high-handed action. By all accounts, unauthorized seizures are fairly common by folks whose property abuts unassumed alleys. Unless there are service issues, the city usually ignores the appropriations.

What Medeiros ran up against, however, was a swift and outraged response from area residents who want to keep the laneway in public hands. Soon 200 signatures to that effect were collected. That petition has now grown to more than 650 signatures.

In the face of such strong opposition, Medeiros took down the fence but, despite VanderBeek's assurance to the contrary, persisted with his purchase application.

At this week's committee meeting, resident after resident spoke out against the sale, arguing it elevates the wishes of a few over many and erodes the community's small town fabric and quaint charm.

Significantly, the part of the laneway in question is in the Cross-Melville Heritage District, which means Medeiros needed

heritage approval for the paving and fencing. He didn't get it. City staff, somewhat disturbingly, suggests the approval can be given retroactively if the lane is sold.

Conspiracy theorists are whispering that VanderBeek supports Medeiros because he contributed to her election campaign (which he did) and that his company has done millions of dollars of work for the city (which it has). VanderBeek insists there is no "special privilege" at play. There's no reason to doubt her.

There is, however, plenty of reason to question her support for the sale based on safety concerns. Yes, the lane leads to St. Augustine elementary school on Alma Street and a school bus and parental pickup zone. And, yes, after a safety review the city posted warning signs not to use the laneway to access the school.

But if there have been any accidents or incidents linked to the lane during its 160 years, nobody has seen fit to mention it. The day I dropped by when school was letting out, only a handful of kids used the lane and all were escorted by parents.

The safety issue is a red herring which, somewhat suspiciously, only surfaced after residents spoke out against the sale. This is really about whether to mechanically follow a flawed city practice — and risk threatened legal action by residents — or respect community wishes and values. Let's see on which side council lands.

Andrew Dreschel's commentary appears Monday, Wednesday and Friday.
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