



CITY OF HAMILTON
PUBLIC WORKS DEPARTMENT
Engineering Services Division

TO:	Chair and Members Public Works Committee
COMMITTEE DATE:	July 13, 2017
SUBJECT/REPORT NO:	Proposed Permanent Closure and Sale of a Portion of Public Unassumed Alley Abutting 353 Strathearne Avenue, Hamilton (PW17055) (Ward 4)
WARD(S) AFFECTED:	Ward 4
PREPARED BY:	Marilyn Preston (905) 546-2424, Extension 4298
SUBMITTED BY:	Gary Moore, P.Eng. Director, Engineering Services Public Works
SIGNATURE:	

RECOMMENDATION

- (a) That a portion of the north/south public unassumed alleyway abutting the rear of 353 Strathearne Avenue, Hamilton, as shown on Appendix "A", attached to Report PW17055 (the Subject Lands), be permanently closed and sold to the owner of 353 Strathearne Avenue, Hamilton, 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.

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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 Real Estate Section of the Planning and Economic Development Department be authorized and directed to sell the closed highway to the owner of 353 Strathearne Avenue, Hamilton, in accordance with By-Law 14-204, Sale of Land Policy By-Law, 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 14-204 (Sale of Land Policy By-law);
- (vii) That the applicant enters into agreements with any Public Utility requiring easement protection.

EXECUTIVE SUMMARY

The owner of 353 Strathearne Avenue, Hamilton, has constructed a garage which is currently accessed through a public unassumed alley. The owner has also paved the portion of alley and road allowance abutting the garage. The property owner to the north is opposed to the closure as they state that they want to continue to have vehicular access over the alley. However, they have constructed a fence at the rear of their property which blocks the alley and they have front yard parking on Paling Avenue. As the garage is located at the entrance to the alley and as the portion of alley to the north of the garage is already inaccessible due to a fence, staff support the permanent closure and sale to the owner of 353 Strathearne Avenue, Hamilton.

Alternatives for Consideration – See Page 4

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: The applicant has paid the Council approved user fee of \$4,367.00. The Subject Lands will be transferred to the owner of 353 Strathearne 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 Real Estate Section of the Planning and Economic Development Department.

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 353 Strathearne Avenue, Hamilton, pursuant to an agreement of purchase and sale or Offer to Purchase as negotiated by the Real Estate Section of the Planning and Economic Development Department.

HISTORICAL BACKGROUND

The owner of 353 Strathearne Avenue in Hamilton has constructed a garage with the entrance fronting onto a public unassumed alley at the rear of the property. As the owner of 353 Strathearne Avenue is seeking to guarantee access to the garage, they have made application to permanently close and purchase the portion of alley abutting 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, Economic Development, Real Estate and Planning
- Public Works Department: Engineering Services, Hamilton Water, Operations, Environmental Services and Transportation
- Hamilton Emergency Services
- Corporate Services Department: Budgets and Finance
- Mayor and Ward Councillor
- Bell Canada, Hydro One, Horizon Utilities and Union Gas

There were no objections received from any City Departments and Divisions and Public Utilities. Bell has advised that they will require easement protection.

Notice was sent to owners within a 400' (121m) radius of the subject lands, as shown on Appendix "B" for comment. In this instance, there were 102 notices sent and the results are as follows:

In favour: 4

Opposed: 4

No comment: 94

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Only one respondent who is opposed to the closure abuts the alley and they have blocked the alley with a fence just north of the subject lands.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

As the owner's property is the first property abutting the alley and as the alley has been blocked just north of the subject lands making it impassable, staff can support permanently closing and selling the portion of alley to applicant.

ALTERNATIVES FOR CONSIDERATION

The alley could remain public unassumed. However, as the owner has constructed a garage requiring access from the alley and as the alley is blocked by a fence just north of the property, staff support permanently closing and selling the alley to the owner of 353 Strathearne Avenue.

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