



CITY OF HAMILTON
PUBLIC WORKS DEPARTMENT
Engineering Services Division

TO:	Chair and Members Public Works Committee
COMMITTEE DATE:	September 18, 2017
SUBJECT/REPORT NO:	Proposed Permanent Closure and Sale of a Portion of Road Allowance Abutting 786 Governor's Road, Dundas (PW17074) (Ward 13)
WARD(S) AFFECTED:	Ward 13
PREPARED BY:	Gord McGuire (905) 546-2424, Extension 2439
SUBMITTED BY:	Gary Moore, P.Eng. Director, Engineering Services Public Works
SIGNATURE:	

RECOMMENDATION

That the application of the City of Hamilton to permanently close and purchase a portion of the road allowance abutting 786 Governor's Road, Dundas, as shown on Appendix "A", attached to Report PW17074, be approved, subject to the following conditions:

- (a) That the City Solicitor be authorized and directed to prepare a by-law to permanently close the highway;
- (b) That the appropriate by-law be introduced and enacted by Council;
- (c) That the Economic Development and Real Estate Division of the Planning and Economic Development Department be authorized and directed to sell the closed highway to the City of Hamilton, in accordance with By-law 14-204 (Sale of Land Policy), for a nominal fee;
- (d) 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;
- (e) 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;
- (f) That the Public Works Department give notice of the City's intention to pass the by-law pursuant to City of Hamilton By-law 14-204 (Sale of Land Policy).

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EXECUTIVE SUMMARY

This report addresses an anomaly in title for 786 Governor's Road.

The alignment of Hwy 99 as laid out in 1938 by MTO leaves a portion of the original 1825 road allowance either untraveled or abandoned as a result of a northerly diversion around this property to facilitate highway construction.

Tax records from MPAC indicate that the property known as 786 Governor's Road is assessed and paying taxes on the original road allowance portion (Appendix "A"). Registry Office records indicate title to the road allowance appears to still remain with the City of Hamilton. Historic air photo indicates that as far back as 1949, Part 2 was occupied by a barn or farm structure on that portion of unopened 1825 road allowance. The owners of this property have been using the 1825 road allowance lands for an uninterrupted period of over 75 years.

This matter came to staff's attention during a potential land sale of 786 Governor's Road, and through our research we believe that there may be some confusion in the title transfers over the years. However, the Land registry Office still considers the City of Hamilton as the registered owner of the road allowance; therefore, staff recommends following the by-law process to close and sell the road allowance lands.

Alternatives for Consideration – See Page 4

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: In this particular instance, due to the circumstances surrounding clarity and title, staff are advancing this report and, therefore, there is no user fee associated with this application.

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 from the City of 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

Historic records indicate that the original road allowance as shown on Appendix "A", was laid out by the original surveyor in 1825. However, the MTO created Hwy 99 (also known as Governor's Road) by Plan 185 Misc (A-41-34) in 1938.

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Part 2, Plan 62R-11957 is Part of the Original Road Allowance between the Geographic Townships of Ancaster and West Flamborough. This Road Allowance was surveyed by A. Jones under instructions confirmed by Act 6 Geo IV Chapter 5, (April 13, 1825) and shown as straight on MNR Plan G11 dated October 18, 1925. Sometime between that survey and the Assumption survey registered as Plan 185 Misc. (A-41-34) in 1938, the paved roadway that became known as Highway 99 deviated from the location of 1825. An overlay of 1949 aerial photography over mapping confirms paved road deviation from original road allowance at that time.

Over time some title documents began to include the portion of the Original Road Allowance between the Geographic Townships of Ancaster and West Flamborough south of Lot 5, Con 1, West Flamborough in their description. These documents identify the northern limit of the parcel as "the Southern limit of travelled road opened in lieu of the original road allowance between the Township of West Flamborough and Ancaster and now forming part of King's Highway 99". As well a portion of the Original Road Allowance between the Geographic Townships of Ancaster and West Flamborough was closed by OIC-784/76 registered as Plan 2102 Misc., being Part 2, 62R-2294 and subsequently transferred to the adjoining owner.

The title document for No 786 Governors Road, HL 337160 (*Firstly and Secondly*) does not include the Road Allowance in the described lands; however, the lands identified as Secondly do describe the lands "being known as the Gore or piece of land between the old and new line of Governor's Road or Road Allowance." These lands are noted as containing 2 acres +/- and Parts 1 and 2 on 62R-11957 contain 2.13 acres and appear to include the lands of the Road Allowance.

Given the above potential mis-descriptions and the reality of a different route for Governors Road as laid out by the MTO, City of Hamilton staff feel these lands should have been dealt with in 1938 at the time of the provincial highway creation.

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 there we no objections.

- Planning and Economic Development Department: Development Engineering, Building, Economic Development and Real Estate and Planning
- Public Works Department: Engineering Services, Hamilton Water, Environmental Services, Operations and Transportation

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- Hamilton Emergency Services
- Corporate Services Department: Budgets and Finance, Taxation Section
- Mayor and Ward Councillor
- Bell, Horizon Utilities/Alectra Utilities, Hydro One and Union Gas

ANALYSIS AND RATIONALE FOR RECOMMENDATION

By closing and selling this remnant of original road allowance, the resident will have clarity of title and the City will not be considered the title holder of an abandoned unused and realigned portion of a public highway. There has been no interest expressed internally or externally in these lands via circulation.

ALTERNATIVES FOR CONSIDERATION

The alternative is the City retains title which leaves the subject property with a gap in its physical holdings. It should be noted that there has been a barn on this property for over 75 years.

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