



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

<b>TO:</b>	Chair and Members Public Works Committee
<b>COMMITTEE DATE:</b>	March 19, 2018
<b>SUBJECT/REPORT NO:</b>	Proposed Permanent Closure and Sale of a Portion of Public Unassumed Alley Abutting 193 East 22nd Street, Hamilton (PW18024) (Ward 7)
<b>WARD(S) AFFECTED:</b>	Ward 7
<b>PREPARED BY:</b>	Gary Kirchknopf, Senior Project Manager Corridor Management (905) 546-2424, Extension 7217  Cetina Farruggia, Road Programming Technician Corridor Management (905) 546-2424, Extension 5803
<b>SUBMITTED BY:</b>	Gord McGuire, Geomatics & Corridor Management Public Works
<b>SIGNATURE:</b>	

**RECOMMENDATION**

That the application of the owner of 193 East 22<sup>nd</sup> Street, Hamilton to permanently close and purchase a portion of the unassumed alleyway abutting the North side of 193 East 22<sup>nd</sup> Street, Hamilton, ("Subject Lands"), as shown on Appendix "A", attached to Report PW18024, be approved, subject to the following conditions:

- (a) That the applicant makes an application to the Ontario Superior Court of Justice, under Section 88 of the Registry Act, for an order to permanently close the Subject Lands, if required by the City, subject to:
  - (i) The General Manager of Public Works, or designate, signing the appropriate documentation to obtain any required court order; and
  - (ii) The documentation regarding any required application to the Ontario Superior Court of Justice being prepared by the applicant, to the satisfaction of the City Solicitor;
- (b) That the applicant be fully responsible for the deposit of a reference plan in the proper land registry office, 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 also deposit a reproducible copy of said plan with the Manager, Geomatics and Corridor Management Section;

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- (c) That, subject to any required application to the Ontario Superior Court of Justice to permanently close the Subject Lands being approved:
  - (i) The City Solicitor be authorized and directed to prepare all necessary by-laws to permanently close and sell the alleyway, for enactment by Council;
  - (ii) The Real Estate Section of the Planning and Economic Development Department be authorized and directed to sell the closed alleyway to the owners of 193 East 22<sup>nd</sup> Street, Hamilton,, as described in Report PW18024, in accordance with the City of Hamilton Sale of Land Policy By-law 14-204;
  - (iii) The City Solicitor be authorized to complete the transfer of the Subject Lands to the owners of 193 East 22<sup>nd</sup> Street, 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;
  - (iv) The City Solicitor be authorized and directed to register a certified copy of the by-laws permanently closing and selling the alleyway in the proper land registry office;
  - (v) The Public Works Department provide any required notice of the City's intention to pass the by-laws and/or permanently sell the closed alleyway pursuant to City of Hamilton Sale of Land Policy By-law 14-204;
- (d) That the applicant enters into agreements with any Public Utility requiring easement protection.

**EXECUTIVE SUMMARY**

The owner of 193 East 22<sup>nd</sup> Street in Hamilton has applied to permanently close and purchase a portion of the public unassumed alleyway running East/West at the north side of his property, as his side door currently encroaches into this corridor. Notice of the application was circulated to internal City Divisions, public utilities and owners of properties within a 400' (121.9m) radius of the Subject Lands. No opposition was received from any internal City Divisions or public utilities. One opposition was received from a non-abutting land owner within the circulation radius and one opposition was received from an abutting land owner. As a result of the abutting owner opposition, staff communicated with the Applicant to adjust the Subject Lands in order to not impede access to the rear of the opposed abutting land owner's rear garage. The opposed applicant revised their opposition to be in favour.

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

**FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

Financial: The applicant has paid the Council approved user fee of \$4,454.00. The Subject Lands will be sold to the owners of 193 East 22<sup>nd</sup> Street, Hamilton, in accordance with the City of Hamilton Sale of Land Policy By-law 14-204.

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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:** Subject to any required application to the Ontario Superior Court of Justice to permanently close the Subject Lands being approved, the City Solicitor will prepare all necessary by-laws to permanently close and sell the Subject Lands and will register such by-laws in the Land Registry Office once Council has approved the by-law. The by-law does not take effect until the certified copy of the by-law is registered in the proper land registry office. The City Solicitor will complete the transfer of the Subject Lands to the owners of 193 East 22<sup>nd</sup> Street, Hamilton, pursuant to an agreement negotiated by the Real Estate Section of the Planning and Economic Development Department.

### **HISTORICAL BACKGROUND**

The applicant submitted the application to purchase the Subject Lands on June 2, 2017. The current City policy is to not perform maintenance on public unassumed alleyways. There is also a fence that has blocked the east/west portion of this alley from access to the north/south leg of the alleyway for many years. The applicants' side door currently encroaches into the alleyway. A discussion between the Applicant and one abutting opposed owner resulted in a modified portion of the alley to be closed, agreed upon to the satisfaction of both owners. The opposed abutting owner resubmitted a response in favour of the closure and sale to the owner of 193 East 22<sup>nd</sup> Street, Hamilton.

### **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

The closure of the Subject Lands will be subject to any application required by the City. In addition, a by-law must be passed to permanently close the Subject Lands in accordance with the *Municipal Act, 2001*.

### **RELEVANT CONSULTATION**

The following public utilities, City departments and divisions were provided with a copy of the application and were 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, Horizon Utilities/Alectra Utilities, Hydro One, and Union Gas

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There were no objections received from any public utilities, City departments and divisions.

Bell has advised that they will require easement protection.

Notice of the proposal was sent to all abutting property owners of the Subject Lands, as shown on Appendix "B", for comment. In this instance, there were 42 notices mailed, and the results are as follows:

In favour: 2

Opposed: 1

No comment: 0

One of the opposed owners does not directly abut the Subject Lands and has through access to his rear property down the N/S leg of the alley with entrance off of Queensdale Road, Hamilton. One of the in favour owners who abuts the Subject Lands was originally opposed, expressing concerns regarding access to their rear garage. As such, staff communicated with the Applicant and accommodation was made to adjust the Subject Lands in order to rectify the concerns of this owner. This owner was recirculated and returned a response of in favour.

#### **ANALYSIS AND RATIONALE FOR RECOMMENDATION**

As there were no objections received from any City Departments, Divisions, or Public Utilities and only one objection from an abutting owner whose concerns were rectified, staff support the permanent closure and sale of the Subject Lands to the owner of 193 East 22<sup>nd</sup> Street, Hamilton.

#### **ALTERNATIVES FOR CONSIDERATION**

The City could deny the application and the alleyway would remain public unassumed.

#### **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