



CITY OF HAMILTON
PUBLIC WORKS DEPARTMENT
Engineering Services Division

TO:	Chair and Members Public Works Committee
COMMITTEE DATE:	June 4, 2018
SUBJECT/REPORT NO:	Proposed Permanent Closure and Sale of a Portion of Public Unassumed Alley Abutting 49 Walnut Street South, Hamilton (PW18047) (Ward 2)
WARD(S) AFFECTED:	Ward 2
PREPARED BY:	Gary Kirchknopf Geomatics & Corridor Management (905) 546-2424, Extension 7217
SUBMITTED BY:	Gary Moore, P.Eng. Director, Engineering Services Public Works
SIGNATURE:	

RECOMMENDATION

That the application of the owner of 49 Walnut Street South, Hamilton, to permanently close and purchase a portion of the unassumed alleyway abutting the North side of 49 Walnut Street South, Hamilton, ("Subject Lands"), as shown on Appendix "A", attached to Report PW18047, 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;
- (c) That, subject to any required application to the Ontario Superior Court of Justice to permanently close the Subject Lands being approved:

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- (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 49 Walnut Street South, Hamilton, as described in Report PW18047, in accordance with the City of Hamilton Sale of Land Policy By-law 14-204;
 - (iii) 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;
 - (iv) 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 49 Walnut Street South, Hamilton has applied to permanently close and purchase a portion of the public unassumed alleyway running East/West at the North side of their property for the purpose of land assembly required for future development proposed under Formal Consultation file FC-17-079. There were no objections received from any City Departments, Divisions, or Public Utilities. There were 4 opposed responses received from abutting land owners with access concerns. Staff completed an on-site visit of the Subject Lands, and due to the placement of a Hydro Pole approximately 2.8m from the building known as 154 Main Street East, limited vehicular traffic is currently only able to access the alleyway from the Walnut Street South entrance and therefore, must use the Ferguson Street entrance for deliveries and access to the rear of abutting properties. As this proposed closure does not impact access from Ferguson Street South, staff are supportive of the proposed closure and sale to the owner of 49 Walnut Street South.

Alternatives for Consideration – See Page 5

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 49 Walnut Street South, Hamilton, as determined by the Real Estate Section of the Planning and Economic Development Department in accordance with the City of Hamilton Sale of Land Policy By-law 14-204.

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 49 Walnut Street South, Hamilton pursuant to an agreement negotiated by the Real Estate Section of the Planning and Economic Development Department.

HISTORICAL BACKGROUND

The Subject Lands are composed of an alleyway created by Registered Plan 48. There is currently a Hydro Pole located within this alleyway that sits approximately 2.8m from the south wall face of the building known as 154 Main Street East. This pole currently limits the ability for through vehicular traffic to pass through this alleyway from Walnut Street South to Ferguson Street South. Currently, the owners of abutting portions of this alleyway access the rear of their properties via the Ferguson Street South entrance. On June 8, 2017, the owners of 49 Walnut Street South made application to close and purchase a portion of this alleyway in order to facilitate land assembly required to complete future development plans being part of Formal Consultation FC-17-079. After receiving letters of opposition for abutting land owners, staff completed an on-site investigation on April 27, 2018. The results of the investigation provided insight into the travel ability of the Subject Lands and the impact this closure would have on abutting land owners. It was determined that due to the distance of the Hydro pole from the existing south face of the building of 154 Main Street East, there is limited ability for a vehicular traffic to access the rear of the properties abutting the Easterly portion of the alleyway from the Walnut Street South entrance. As the Subject Lands do not impact the access for abutting land owners via the Ferguson Avenue South entrance, staff determined this proposed closure would not negatively impact the abutting land owners. As such, staff are supportive of this proposed closure and sale of the Subject Lands to the owner of 49 Walnut Street South.

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:

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- 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

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

Engineering Services provided the following comments regarding the Hydro Pole within the Subject Lands:

“The space between the hydro pole and the building wall measures out to be 2.8M. The average width of a standard car is about 3M. Therefore, no delivery trucks or vans would be able to fit between that area.”

Zoning provided the following comments:

“This applicant has applied for Formal Consultation (File No. FC-17-079). The applicant proposes to replace the existing commercial office and parking lot in order to establish a mixed use development consisting of a sixteen (16) storey residential tower with 200 units fronting Main Street East. A five (5) storey parking structure is proposed along Jackson Street East that will comprise 206 parking spaces. The proposed density would be 647 units per hectare. Approximately 1,408 square metres of retail/commercial floor space is proposed on the ground floor of the residential tower. A Zoning By-law Amendment application will be required to implement the proposal.”

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 7 notices mailed, and the results are as follows:

In favour: 0

Opposed: 4

No comment: 0

Those opposed expressed concerns regarding access to the rear of their properties for business purposes, deliveries, and parking. After an onsite investigation by staff, it was determined that the Subject Lands do not currently provide access to the portion of the alleyway used by these abutting owners and therefore, the proposed closure would not negatively impact the abutting owners.

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ANALYSIS AND RATIONALE FOR RECOMMENDATION

As there were no objections received from any City Departments, Divisions, or Public Utilities, and as an on-site investigation by Staff removed the relevance of the objections received from abutting land owners regarding access concerns, staff are supportive of the proposed closure and sale of the Subject Lands to the owner of 49 Walnut Street South.

ALTERNATIVES FOR CONSIDERATION

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

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