



CITY OF HAMILTON
PUBLIC WORKS DEPARTMENT
Engineering Services Division

TO:	Chair and Members Public Works Committee
COMMITTEE DATE:	August 16, 2018
SUBJECT/REPORT NO:	Proposed Permanent Closure and Sale of a Portion of Public Assumed Alley Abutting 542 Upper Sherman Avenue, Hamilton (PW18073) (Ward 7)
WARD(S) AFFECTED:	Ward 7
PREPARED BY:	Gary Kirchknopf Corridor Management (905) 546-2424, Extension 7217 Cetina Farruggia Corridor Management (905) 546-2424, Extension 5803
SUBMITTED BY:	Gord McGuire Director, Engineering Services Public Works
SIGNATURE:	

RECOMMENDATION

That the application of the owner of 542 Upper Sherman Avenue, Hamilton, to permanently close and purchase a portion of the assumed alleyway abutting the East side of 542 Upper Sherman Avenue, Hamilton, ("Subject Lands"), as shown on Appendix "A", attached to Report PW18073, 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

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- 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:
- (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 542 Upper Sherman Avenue, Hamilton, as described in Report PW18073, 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 542 Upper Sherman 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;
 - (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 542 Upper Sherman Avenue, Hamilton, has applied to permanently close and purchase a portion of the public assumed alleyway running North/South at the rear of the property between Brucedale Avenue and Fennel Avenue East in Hamilton, in order to accommodate an addition to his home and garage at the rear of his property. As there were no objections received from any City Departments, Divisions, or Public Utilities and only one objection received from an abutting land owner, who did not provide appropriate comments on how their property would be impacted by the proposed closure, staff are supportive of the permanent closure and sale of the Subject Lands to the owner of 542 Upper Sherman Avenue, Hamilton.

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 542 Upper Sherman Avenue,

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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 542 Upper Sherman Avenue, Hamilton, pursuant to an agreement negotiated by the Real Estate Section of the Planning and Economic Development Department.

HISTORICAL BACKGROUND

The Subject Lands are a portion of alleyway created by Registered Plan 608 and assumed by the City of Hamilton by By-Law 75-39 registered as Registered Instrument AB363729. Although assumed, the majority of the alleyway South of the Subject Lands is encroached upon and encumbered by vegetation and therefore untravelled. On March 15, 2018 the owner of 542 Upper Sherman Avenue, Hamilton made application to close and purchase a portion of the Subject Lands in order to accommodate for a future addition to his home and garage at the rear of his property.

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

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- Bell, Horizon Utilities/Alectra Utilities, Hydro One, and Union Gas

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 34 notices mailed, and the results are as follows:

In favour: 0 Opposed: 1 No comment: 0

The opposed response was received from an abutting owner to the alleyway, not the subject lands and did not provide a sufficient explanation as to how their property was affected by the proposed closure.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

As there were no objections received from any City Departments, Divisions, or Public Utilities, and only one objection received from an abutting land owner who did not abut the Subject Lands directly, staff are supportive of the permanent closure and sale of the Subject Lands to the owner of 542 Upper Sherman Avenue, Hamilton.

ALTERNATIVES FOR CONSIDERATION

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

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