



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

<b>TO:</b>	Chair and Members Public Works Committee
<b>COMMITTEE DATE:</b>	January 14, 2019
<b>SUBJECT/REPORT NO:</b>	Proposed Permanent Closure and Sale of a Portion of Public Unassumed Alley Abutting 256 Mary Street, 250-252 Mary Street and 130 Barton Street East, Hamilton (PW11012a) (Ward 2)
<b>WARD(S) AFFECTED:</b>	Ward 2
<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 Director, Engineering Services Public Works
<b>SIGNATURE:</b>	

**RECOMMENDATION**

That the application of the owners of 250-252 Mary Street, 256 Mary Street, and 130 Barton Street East, Hamilton to permanently close and purchase a portion of the unassumed alleyway abutting 250-252 Mary Street, 256 Mary Street, and 130 Barton Street East, Hamilton, ("Subject Lands"), as shown on Appendix "A" and Appendix "B", attached to Report PW11012a, 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;

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- (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:
  - (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 250-252 Mary Street, 256 Mary Street, and 130 Barton Street East, Hamilton, as described in Report PW11012a, 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 250-252 Mary Street, 256 Mary Street, and 130 Barton Street East, 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 publish 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 256 Mary Street, Hamilton originally applied to purchase a portion of the subject lands in 2011 as described in PW11012, being Part B & D, Appendix "C" attached to Report PW11012a. There was an omission within the description of lands within this report which did not give the appropriate authorization and direction to close and sell the portion of the subject lands to the east of 256 Mary Street, Hamilton, being Part B, Appendix "C", attached to Report PW11012a.

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In 2016, staff received an internal application on behalf 130 Barton Street East for Part A, Appendix C, attached to report PW11012a to be closed and transferred to the Owner of 130 Barton Street East as part of a Land Swap agreement for Part E, Appendix "C" attached to Report PW11012a. Staff recirculated the Subject Lands for up to date comments. At that time, the owner of 250-252 Mary Street expressed interest in purchasing the portion of the Subject Lands that abut the east side of 250-252 Mary Street, being Part C, Appendix "C" attached to Report PW11012a.

There were no objections from City Departments, Divisions, or Public Utilities, and 4 objections received from abutting land owners. Those opposed expressed concerns related to access. As the East-West Leg of the alleyway abutting the 256 Mary Street, being Part D, Appendix "C" attached to Report PW11012a was already approved for closure and sale through PW11012, and as the current application does not impede any access to abutting owners, as the alleyway currently egresses out onto Elgin Street, being Part E, Appendix "C", attached to Report PW11012a which will be formalized through the Land Swap agreement with the owners of 130 Barton Street East, staff are in support of the closure and sale of the Subject Lands to the owners of 250-252 Mary Street, 256 Mary Street, and 130 Barton Street East, Hamilton as described in Appendix "A" attached to Report PW11012a.

***Alternatives for Consideration – See Page 5***

**FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

Financial: Due to the nature of this application being ongoing from an original application in 2011, there is no user fee associated with this application.

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 250-252 Mary Street, 256 Mary Street, and 130 Barton Street East, Hamilton pursuant to agreements negotiated by the Real Estate Section of the Planning and Economic Development Department.

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## **HISTORICAL BACKGROUND**

The portion of the Subject Lands are made up of a portion of public unassumed alleyway created by RP-287. The easterly portion of the East-West Leg of the alleyway, being Parts 1, 2, 3 and 4 on Plan 62R-5587 (Part A, Schedule C attached to Report PW11012a), currently occupied by the owner of 130 Barton Street East, was originally supposed to be part of a Land Swap agreement between the owner of 130 Barton Street East and the City of Hamilton for Part 5 and 6 on Plan 62R-5587 (Part E, Schedule C, attached to Report PW11012a) dating back to the 1980's.

The Land Swap is still in process and in 2011, the owners of 130 Barton Street East also made application for the westerly portion of the East-West Leg of the alleyway abutting 256 Mary Street, being Parts 1 and 2 on Plan 62R-20015 (Part D, Schedule C, attached to report PW11012a). During this circulation, the owner of 256 Mary Street expressed interest in purchasing a portion of the alleyway, being Parts 2 and 3 on Plan 62R-20015 (Southern half of Part D and all of Part B, Schedule C, attached to report PW11012a). However, the report PW11012, approved by Council on February 9<sup>th</sup>, 2011 through Public Works Committee Report 11-002, only provided authorization for Part 1 and 2 on Plan 62R-20015 (Part D, Schedule C, attached to report PW11012a).

In 2016, staff received an application from the owners of 130 Barton Street East for Parts 1, 2, 3 and 4 on Plan 62R-5587 (Part A, Schedule C, attached to report PW11012a) in order to facilitate the Land Swap Agreement for Parts 5 and 6 on Plan 62R-5587 (Part E, Schedule C, attached to Report PW11012a), which will be the formal egress of the alleyway onto Elgin Street.

In 2017, the owner of 130 Barton Street East inquired about making an application for Parts 3 and 4 on Plan 62R-20015 (Parts B and C, Schedule C, attached to report PW11012a). At this time, after consultation with the Real Estate Section, staff realized that the owner of 256 Mary Street had unfulfilled interest in Part 3 on 62R-20015 (Part B, Schedule C, attached to Report PW11012a) and could not proceed with the purchase of Parts 2 and 3 on Plan 62R-20015 (Southern half of Part D and all of Part B, Schedule C attached to Report PW11012a) without Council direction for Part 3 on 62R-20015 (Part B, Schedule C attached to Report PW11012a).

Staff proceeded to circulate the subject lands not previously circulated. During this circulation, the owner of 250-252 Mary Street expressed interest in Part 4 on Plan 62R-20015 (Part C, Schedule C attached to Report PW11012a) as he had plans on building a garage at the rear of his property and needed to maintain access from the alleyway.

On Monday May 7<sup>th</sup>, 2018 staff met with the owners of 256 Mary Street and 250-252 Mary Street to discuss. After the consultation, staff further discussed the file with the Real Estate Section and Corridor Management and determined that Parts 3 and 4 on

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Plan 62R-20015 (Parts B and C, Schedule C, attached to Report PW11012a) would be recommended for closure and sale to the owners of 256 Mary Street and 250-252 Mary Street, Hamilton and Parts 1, 2, 3, and 4 on Plan 62R-5587 (Part A, Schedule C attached to Report PW11012a) would be closed and included in the land swap with the owners of 130 Barton Street East, 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

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 38 notices mailed, and the results are as follows:

In favour: 0

Opposed: 4

No comment: 0

One of the opposed did not provide comment regarding their opposition. Three of the opposed expressed concerns related to access. The Subject Lands made up part of

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the unassumed alleyway that once exited onto Mary Street. As Part D, Schedule C attached to Report PW11012a was already approved to be closed and sold through PW11012, and as Part A, Schedule C attached to report PW11012a is already occupied by the owner of 130 Barton Street East, Hamilton, the closure and sale the subject lands do not negatively affect any access to abutting land owners.

**ANALYSIS AND RATIONALE FOR RECOMMENDATION**

As there were no objections received from any City Departments, Divisions, or Public Utilities, and the objections received from abutting land owners have been addressed, staff support the closure and sale of the Subject Lands to the owners of 256 Mary Street 250-252 Mary Street, and 130 Barton Street, Hamilton.

**ALTERNATIVES FOR CONSIDERATION**

The City could deny this 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

Appendix C: Schedule of Parcels for Reference