



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

<b>TO:</b>	Chair and Members Public Works Committee
<b>COMMITTEE DATE:</b>	February 22, 2019
<b>SUBJECT/REPORT NO:</b>	Proposed Permanent Closure and Sale of a Portion of Public Unassumed Alley Abutting 46 Ferguson Avenue South, Hamilton (PW19016) (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 owner of 46 Ferguson Avenue South, Hamilton, to permanently close and purchase a portion of the unassumed alleyway running East/West and abutting the North side of 46 Ferguson Avenue, Hamilton, ("Subject Lands"), as shown on Appendix "A" and Appendix "B", attached to Report PW19016, 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

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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 46 Ferguson Avenue South, Hamilton, as described in Report PW19016, 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 46 Ferguson Avenue South, 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;
- (e) That the applicant enters into private agreements with those property owners abutting the Subject Lands, to allow those property owners unobstructed access to their properties over the Subject Lands;
- (f) That the City of Hamilton retain any necessary road widenings to the satisfaction of the Manager, Geomatics and Corridor Management in accordance with the City of Hamilton Official Plan, which according to the City of Hamilton Official Plan, the necessary widening shall be 2.591 meters.

## **EXECUTIVE SUMMARY**

The owner of 46 Ferguson Avenue South, 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 in order to assume maintenance over the alleyway. There were no objections received from any City Departments, Divisions, or Public Utilities. There was one objection received from abutting land owners with concerns regarding access to rear parking. As the applicant has agreed to provide any necessary right of

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way agreements to abutting land owners, staff feel this objection has been addressed and are in support of the proposed closure and sale of the Subject Lands to the owner of 46 Ferguson Avenue South, Hamilton.

***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 46 Ferguson Avenue 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 46 Ferguson Avenue 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 unassumed alleyway created by Registered Plan 48. The alleyway is travelled and used to provide rear access to abutting properties. On June 13, 2018, Council approved PW18047 for the closure and sale of a portion of unassumed alleyway to the west of the Subject Lands. On June 21, 2018 the owner of 46 Ferguson Avenue South, Hamilton made application to close and purchase the eastern portion of the unassumed alleyway, not included in PW18047 with the intention of providing private right of way agreements to all abutting land owners and assuming all future maintenance of the alleyway. There were no objections received from any City Departments, Divisions, or Public Utilities. There was one objection received from an abutting land owner regarding rear access to parking. In order to satisfy this objection, the applicant will be required to enter into right of way agreements for unobstructed access for any abutting land owner. As such, staff are in support of the proposed closure and sale of the Subject Lands to the owner of 46 Ferguson Avenue South, Hamilton.

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## **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.

Alectra Utilities and Union Gas have advised that they will require easement protection.

Transportation Planning provided the following comments:

“The existing right-of-way on Ferguson Avenue is approx. between 10.0 metres and 15 metres. Transportation Planning notes proposed alley closure would cause 168, 172 Main Street East and 165 Jackson Street East losing access to the rear of their properties. The applicant noted in their application they are willing to grant legal right-of-way access to the abutting properties. The legal agreement/easement would be required and ensure continued shared use if/when either property is under new ownership/management. Local Roads (Ferguson Avenue) are to be 20.117 metres as per the Council Approved Urban Official Plan: Chapter C - City Wide Systems and Designations, 4.5 Road Network Functional Classification, 4.5.2. The applicant must dedicate approximately three (3) metres to right-of-way.”

Notice of the proposal was sent to all abutting property owners of the Subject Lands, as shown on Appendix “B” of Report PW19016, for comment. In this instance, there were 6 notices mailed, and the results are as follows:

In favour: 0

Opposed: 1

No comment: 1

The opposed response was regarding rear access to parking. As the applicant will be entering into private right of way agreements with abutting land owners, staff feel this objection has been addressed.

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## **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 whose concern has been addressed through the recommendations of this report, staff are supportive of the application for closure and sale of the Subject Lands to the owner of 46 Ferguson Avenue South, Hamilton.

## **ALTERNATIVES FOR CONSIDERATION**

The City could deny this application and the lands 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