



CITY OF HAMILTON
PUBLIC WORKS DEPARTMENT
Engineering Services Division

TO:	Chair and Members Public Works Committee
COMMITTEE DATE:	March 18, 2019
SUBJECT/REPORT NO:	Proposed Permanent Closure and Sale of a Portion of Public Unassumed Alley Abutting 20 Birch Avenue, Hamilton (PW19028) (Ward 3)
WARD(S) AFFECTED:	Ward 3
PREPARED BY:	Gary Kirchknopf (905) 546-2424 Ext. 7217 Cetina Farruggia (905) 546-2424 Ext. 5803
SUBMITTED BY:	Gord McGuire Director, Engineering Services Public Works
SIGNATURE:	

RECOMMENDATION(S)

That the application of the owner of 20 Birch Avenue, Hamilton, to permanently close and purchase a portion of the unassumed alleyway abutting the East side of 20 Birch Avenue, Hamilton, ("Subject Lands"), as shown on Appendix "A", attached to Report PW19028, 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 20 Birch Avenue, Hamilton, as described in Report PW19028, 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 20 Birch 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 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 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.

EXECUTIVE SUMMARY

The owner of 20 Birch Avenue, Hamilton, has applied to permanently close and purchase a portion of the public unassumed alleyway running North/South at the East side of his property. The alleyway currently is the sole access the owner has to a number of garages that front onto the alleyway. The properties that abut the access to this alleyway off of Wilson Street East are owned by the applicants' family. As there were no objections received from any City Departments, Divisions, or Public Utilities

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and no objections received from any abutting land owners, staff support the application from the owner of 20 Birch Avenue, Hamilton to close and purchase the Subject Lands.

Alternatives for Consideration – See Page 5

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: The applicant has paid the Council approved user fee of \$4,367.00. The Subject Lands will be sold to the owners of 20 Birch Avenue, 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 20 Birch Avenue, Hamilton, pursuant to an agreement negotiated by the Real Estate Section of the Planning and Economic Development Department.

HISTORICAL BACKGROUND

The Subject Lands form the North/South leg of a T-Shaped public unassumed alleyway created by Registered Plan 219. The Subject Lands have been historically used primarily by the owner of 20 Birch Avenue, Hamilton to access a number of garages that front onto the alleyway. On June 10, 2016, staff received an application from the owner of 20 Birch Avenue, Hamilton to close and purchase a portion of the public unassumed alleyway in order to gain legal ownership to access the rear garages located along the rear of his property. As there were no objections received from any City Departments, Divisions, or Public Utilities, and no objections received from any abutting land owners, staff are in support of the application.

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.

Zoning provided the following comments:

“It appears that the intent is to merge these lands in title with the property known as 651 Wilson Street. Please note that 651 Wilson Street is currently a Lot of Record; merging these lands in title will create a non-conformity with regard to the minimum required lot width and lot area. Note that the minimum required lot width is 12.0m and the minimum required lot area is 360.0m²• [m²] A successful application for minor variance will be required in order to permit a reduced lot width and lot area.”

Transportation Planning provided the following comments:

“The City of Hamilton Urban Official Plan:

- Chapter C – City Wide Systems and Designation 4.5 Road Network Functional Classification 4.5.2 d) Minor Arterial Road (Wilson Street 36.576 metres)

The City should keep the portion of the Right-of-Way required to accommodate the widening.”

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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 157 notices mailed, and the results are as follows:

In favour: 1 Opposed: 5 No comment: 0

Those opposed do not abut the Subject Lands.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

As there were no objections received from any City Departments, Divisions, or Public Utilities, and no objections received from any abutting land owners, staff are in support of the application to close and purchase the Subject Lands by the owner of 20 Birch Avenue, Hamilton.

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