



CITY OF HAMILTON
PUBLIC WORKS DEPARTMENT
Engineering Services Division

TO:	Chair and Members Public Works Committee
COMMITTEE DATE:	November 4, 2019
SUBJECT/REPORT NO:	Proposed Permanent Closure and Sale of a Portion of Public Unassumed Alley Abutting 263 East 21 st Street, Hamilton (PW19089) (Ward 7)
WARD(S) AFFECTED:	Ward 7
PREPARED BY:	Gary Kirchknopf (905) 546-2424 Ext. 7217 Cetina Farruggia (905) 546-2424 Ext. 5803
SUBMITTED BY: SIGNATURE:	Gord McGuire Director, Engineering Services Public Works

RECOMMENDATION(S)

That the application of the owner of 263 East 21st Street, Hamilton, to permanently close and purchase a portion of the unassumed alleyway abutting the North side of 263 East 21st Street, Hamilton, ("Subject Lands"), as shown on Appendix "A", attached to Report PW19089, 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

SUBJECT: Proposed Permanent Closure and Sale of a Portion of Public Unassumed Alley Abutting 263 East 21st Street, Hamilton (PW19083) (Ward 7) - Page 2 of 5

that the applicant also deposit a reproducible copy of said plan with the Manager, Geomatics and Corridor Management Section;

- (c) That the applicant provide access to the City, upon confirmation of location, to trim any trees currently growing within the Subject Lands in accordance with the City of Hamilton By-Law 15-125 to Regulate Trees on or Affecting Public Property, to the satisfaction of the Ward Councillor;
- (d) That the applicant within 1 year of the Subject Lands being officially transferred, be responsible for the full replacement of the existing fence abutting the Subject Lands and the properties known as 484-496 Brucedale Avenue East, to the satisfaction of the Ward Councillor;
- (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 enter into any requisite easement agreements necessary to affect the orderly disposition of the Subject Lands and to proceed to sell the closed alleyway to the owners of 263 East 21st Street, Hamilton, as described in Report PW19089, 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 263 East 21st Street, 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;

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

EXECUTIVE SUMMARY

The owner of 263 East 21st Street, Hamilton, has applied to permanently close and purchase a portion of the public unassumed alleyway running east/west at the side of their property in order to accommodate land assembly required for future garage enhancements. The alleyway is untravelled and the owner of 263 East 21st Street, Hamilton has had historical occupancy of the lands for many years. There were no objections received from any City department, division, or public utility and 4 objections received from abutting land owners who expressed interest in purchasing the laneway as well. After staff review, it was determined that the opposing owners had no historical use of the laneway and have existing fencing across the rears of their properties that prevent access to the laneway. An onsite meeting was held between the residents and the Ward Councillor to discuss the resident concerns. Concerns raised by the opposing residents related to tree trimming and fence repairs have been accommodated within staff recommendations. As such staff are in support of the closure and sale of the subject lands to the owners of 263 East 21st Street, Hamilton.

Alternatives for Consideration – See Page 5

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: The applicant has paid the Council approved user fee of \$4,543.00. The Subject Lands will be sold to the owners of 263 East 21st Street, 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 263 East 21st Street, 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 the east/west leg of an unassumed laneway created by plan of subdivision RP – 590. The laneway has been encumbered for many years and is untravelled. On June 19, 2018 an application from the owner of 263 East 21st Street, Hamilton, was received for the purpose of land assembly required for future enhancements for a garage upgrade. It was noted on the application that existing fences have been in place for a number of years which establishes historical occupancy of the laneway by the applicant. There were no objections received from any City department, division, or Public Utility. There were 4 objections received from abutting land owners who also made application to purchase their respective portions of the Subject Lands. Staff reviewed the purpose for each application, existing fence lines, and historical occupancy/use. As the applicants have existing fences that block access to the laneway, it was determined that there was no clear historical use or need for access rights by those residents. The Ward Councillor met with all residents to discuss and address concerns related to this application. It was agreed upon by all residents that the applicant would provide the City access to trim the existing City trees located within the Subject Lands and that the applicant be responsible for the replacement of the existing fencing abutting the Subject Lands and 484-496 Brucedale Avenue East, Hamilton, both of which have been included as recommendations within report PW19089. As such, staff are supportive of the closure and sale of the subject lands to the owner of 263 East 21st Street, 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

SUBJECT: Proposed Permanent Closure and Sale of a Portion of Public Unassumed Alley Abutting 263 East 21st Street, Hamilton (PW19083) (Ward 7) - Page 5 of 5

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

No Utility companies 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”, attached to Report PW19083, for comment. In this instance, there were 17 notices mailed, and the results are as follows:

In favour: 1 Opposed: 4 No comment: 0

Two of the opposed responses did not provide reason for their objection. Those opposed expressed interest in applying for portions of the laneway as well. After staff review it was determined that existing fence lines should be maintained.

ANALYSIS AND RATIONALE FOR RECOMMENDATION(S)

As there were no objections from any City Department, Division, or Public Utility, and the 4 opposing responses received from abutting land owners have been addressed, staff are in support of the closure and sale of the Subject Lands to the owner of 263 East 21st Street, Hamilton.

ALTERNATIVES FOR CONSIDERATION

The City could deny this application and the lands would remain public unassumed.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

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APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report PW19083 - Aerial Drawing
Appendix “B” to Report PW19083 - Location Plan