





CITY OF HAMILTON
PUBLIC WORKS DEPARTMENT
Engineering Services Division
and
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Transportation Planning and Parking Division

TO:	Chair and Members Public Works Committee
COMMITTEE DATE:	June 17, 2020
SUBJECT/REPORT NO:	Windemere Road Ownership (PW20032/PED20114) (Ward 10) (Outstanding Business List Item)
WARD(S) AFFECTED:	Ward 10
PREPARED BY:	David Lamont (905) 546-2424 Ext. 4413 Steve Molloy (905) 546-2424 Ext. 2975
SUBMITTED BY:	Gord McGuire Director, Engineering Services Public Works Department
SIGNATURE:	
SUBMITTED BY:	Brian Hollingworth Director, Transportation Planning and Parking Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

- (a) That the City deny the petition for the City to takeover the ownership and maintenance of the Lane known as Windemere Road (East) from the Hamilton Conservation Authority and a private owner and to not dedicate the private lane as a public highway under the Municipal Act; and
- (b) That the item pertaining to correspondence and a petition containing 46 signatures from the residents of Windemere Road (East), Stoney Creek requesting that the City take over the ownership of Windemere Road (East) from the Hamilton

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.

Conservation Authority and a private owner be removed from the outstanding business list.

EXECUTIVE SUMMARY

This report is in response to the correspondence and petition containing 47 signatures from the residents of Windemere Road, Stoney Creek requesting that the City take over the ownership of Windemere Road (East) from the Hamilton Conservation Authority and private land owners that was received by the Hamilton City Council on February 12, 2020. See Appendix "A" to Report PW20032/PED20114.

The easterly leg of the laneway known as Windemere Road is a privately owned right of way that allows all the abutting land owners' access to their parcels of land. This 6.1-metre-wide lane was established in 1953 to replace the original right of way that was lost through erosion of the shore line of the Lake. Title documents show that the lane was formed as a mutual right of way that all the abutting land owners could use and share in the maintenance of the privately-owned lane.

The current laneway does not meet any of the City's standards and assumption of the existing laneway "as is" would result in an infrastructure burden to Public Works. The laneway does not meet the standard basic road width of 20 metres nor has it the infrastructure necessary to maintain this laneway as a public highway. In the current state, public services, such as snow removal and waste removal would require different equipment and be very costly to offer the same level of service.

Alternatives for Consideration – See Page 7

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: If the recommendation is carried by council there is no financial impact to the City.

Staffing: If the recommendation is carried by council there is no staffing impact to the City.

Legal: None

HISTORICAL BACKGROUND

Private Laneway Known as Windemere Road (Easterly Leg – Private Right-of-Way)

The Windemere Road area was first developed as a seasonal cottage area, judging by various historical title documents. As with most seasonally used land the access was

developed as necessary without much formal planning. The 6.1-metre-wide laneway in question, was created as a mutual Right of Way (ROW) laneway in 1953 by Registered Agreement and Grant of Right of Way as in Instrument SA49078 (Appendix “B” to Report PW20032/PED20114). This agreement replaced the original ROW granting owners of lands within Lots 1 and 2, Broken Front Concession access to the Township road allowance between Lots 2 and 3 (Fifty Road) that was registered as agreement Instrument SA30815 (Appendix “C” to Report PW20032/PED20114). The new agreement was necessary to allow access to the parcels of land as the previous ROW, as described in Instrument SA30815, that travelled along Lake Ontario and was lost through erosion of the shoreline of the Lake.

Within the 1953 registered agreement (SA49078) the private laneway was established, within Lot 1, Concession Broken Front in the Geographic Township of Saltfleet, through three private land owners:

1. Lands of Hugh W. Wylie and Norma Christabel Wylie lands being number 45 Windemere Road currently owned by Harold E. Jones and Karen J. Patterson (Part of PIN 17370-0026, Part 8 on Plan 62R-6878);
2. Donald James Bernard McCollum currently owned by Harold Jones (PIN 17370-0080, Part 7 on Plan 62R-6878); and,
3. Freeman Walton Arthur McCollum currently owned by the Hamilton Region Conservation Authority being the Westerly 76.7 metres of Part 2 on Plan 62R-6878 being Part of PIN 17370-0102.

The mutual ROW was established with the understanding that abutting land owners would have a ROW to access their cottages in perpetuity and that the maintenance of this laneway be shared as outlined by item 6 within Registered Instrument SA49078 of the agreement which states: “That the owners from time to time abutting on the said roadway or right of way shall bear an equal share of the maintenance of the said roadway and in the event of there being any dispute as to the condition in which the said roadway or right of way is maintained, then the same shall be settled by the Township Road Superintendent and if he will not act, then by a single arbitrator appointed under The Arbitration Act.”

The original abutting signatories of this agreement form part of Lot 1, Broken Front Concession of the Township of Saltfleet were as followed:

1. Donald James Bernard McCollum, being predecessor in title of PIN 17370-0080 and PIN 17370-0682.
2. Freeman Wilton Arthur McCollum, being predecessor in title of PIN 17370-0031, PIN 17370-0034, PIN 17370-0036, PIN 17370-0076, PIN 17370-0086,

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PIN 17370-0093, PIN 17370-0094, PIN 17370-0095, PIN 17370-0098, PIN 17370-0099, PIN 17370-0100, PIN 17370-0101 and PIN 17370-0102.

3. Wilfred H. Daniell and Edith E. Daniell, being the predecessors in title of PIN 17370-0027 and PIN 17370-0081.
4. Hugh W. Wylie and Nora Christabel Wylie, being the predecessors in title of PIN 17370-0026.
5. Arthur Hastings and Jessie C. Hastings, being the predecessors in title of PIN 17370-0028.
6. George W. Cox and Minnie B. Cox, being the predecessors in title of PIN 17370-1047.
7. Kenny R. Henderson and Inze Henderson, being the predecessors in title of PIN 17370-0030 and PIN 17370-1047.

After 1953 there were a number of land severances completed and other abutting land owners joined the common ROW laneway maintenance:

8. Frank L. Collins (AB100646, 1968), being the predecessor in title of PIN 17370-0076 and PIN 17370-0031.
9. Charles Millar and Alice Millar, (HL134240, 1960), being the predecessors in title of PIN 17370-0086, PIN 17370-0093 and PIN 17370-0101.
10. Lawrence G. Leeks and Edith L. Leeks, (HL85176, 1959), being the predecessors in title of PIN 17370-0086 and PIN 17370-0101.
11. Stephen N. Boychuk and Sadie A. Boychuk, (AB73334, 1967), being the predecessors in title of PIN 17370-0034 and PIN 17370-0100.
12. Joseph E. Whitfield and Violet J. Whitfield, (HL156994, 1961), being the predecessors in title of PIN 17370-0036.
13. Donald V. Brown and Norma G. Brown, (HL157268, 1961 – Correcting deed HL148977), being the predecessors in title of PIN 17370-0099.

Other easements within this ROW have been created to facilitate various utility services over the years, as this seasonal cottage area developed into a year-round living neighbourhood. In 1984, the owners of the ROW granted a waterline easement to the Region to install a watermain to allow municipal water to be supplied to the homes along this ROW. In 1988, the owners also granted an easement in favour of Union Gas to install a gas main to service all the owners within this neighbourhood. In 2018, the owners of the laneway allowed the City of Hamilton to install a sewer line under Municipal Act petition that was brought forth by all the abutting land owners and another easement was granted over part of the ROW.

Currently, there is an agreement on title that formalizes the ROW and the responsibilities of the area residents who use the ROW as the sole point of access.

Every owner who abuts this private laneway should have been briefed by their solicitor at the point of purchase relating to the ownership and maintenance obligations, being that all the necessary information has been registered on title in the Ontario Land Registry Office. The 1953 agreement that is on title has basically set a strong foundation for all the registered users of this ROW laneway to form the laneway in question as a common element condominium which would modernize the 1953 agreement and bring real access value to all the abutting land owners.

For the City to adopt this private laneway as a public highway would open the concept of adopting all the private laneways including present Condo roads. All these roads do not meet the City's current minimum road width standard and in the Windemere Road situation a standard cul-de-sac would be necessary. All private laneways are not constructed to the city's standard and the laneway in question is only 6.1 metres wide and it would be impossible to construct and maintain a public highway without bringing it up to an acceptable standard.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

In general, Public Works does not take ownership or assume land as a public highway that does not meet the standards as established by the current City's policies. In the past, Public Works has received similar requests and the communications with the abutting parties has been the same. One formal reference is the Hatfield Place information report (PW15017) that requested that the City take ownership and dedicate as a public highway a lane that did not meet the same standards that the Windemere Road petition is also asking for.

Comprehensive Outdoor Lighting Study: Sidewalk and Roadway Lighting (PW11041)
(City Wide)

<https://www.hamilton.ca/develop-property/policies-guidelines/sidewalk-and-roadway-lighting-policy>

Storm Drainage Policy

<https://www.hamilton.ca/develop-property/policies-guidelines/storm-drainage-policy>

The Urban Hamilton Official Plan

<https://www.hamilton.ca/develop-property/policies-guidelines/city-wide-corridor-planning-principles-and-design-guidelines>

City Wide Corridor Planning Principles and Design Guidelines policy

<https://www.hamilton.ca/develop-property/policies-guidelines/city-wide-corridor-planning-principles-and-design-guidelines>

RELEVANT CONSULTATION

Waste Collection: The City of Hamilton is committed to providing safe and effective waste collection service and will fully comply with the Ontario Occupational Health and Safety Act's (OHSA) regulations at all times. Regulation 213/91 section 104(1) of the 2012 OHSA Consolidated Edition states: "Every project shall be planned and organized so that vehicles, machines and equipment are not operated in reverse or are operated in reverse as little as possible". In order to comply with the "General Requirements for Waste Collection" the current private lane needs to be constructed to a minimum road width of 6 metres and a 13 metre turning radii needs to be constructed plus the road base must support a minimum of 35,000 kilograms.

Transportation Operations and Maintenance: The current 6.1-metre-wide laneway and configuration creates several roadway maintenance issues which will make it difficult to maintain without upgrading to City standards. Presently, there are no catch basins or underground storm drainage systems in place to control the road surface drainage during spring thaw or rain events. The water either sits on the road and evaporates in warm weather or forms ice during winter or sheet flows in some areas to the side of the laneway which may or may not tie into a localized weeping tile system. The existence or the configuration of a weeping tile system is unknown currently. The present road layout in relation to the adjacent property proximity to the travel portion of the road eliminates the ability for proper snow plowing operations will little to no ability to provide snow storage along the road edge. In addition, in order to provide safe operation of equipment a proper turning around will need to be constructed with a radius of about 18 metres. This cannot be created at this time given the present corridor available.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

There are numerous laneways and right of ways within the City that are privately owned and are being used as mutual points of access by the abutting land owners. If the City was to start acquiring these laneways the precedent for the assumption of numerous other private roads, and condo roads that exist within the City would increase the operating costs significantly as all these nonstandard laneways each require a very different nonstandard solution to maintain and service.

Furthermore, given that each owner currently accessing the ROW would have been thoroughly advised about the legal issues and costs of the current structure of the ROW, there are no adjoining owners who are being unknowingly disadvantaged. They have all chosen to purchase their properties with full knowledge of the issues.

ALTERNATIVES FOR CONSIDERATION

To have the current owners abutting the lane dedicate sufficient lands on both sides of the current lane to achieve an ultimate road allowance of 20.117 meters and to construct a road surface and associated infrastructure to the current City standards as outlined through the current development process. In order to maintain a continuous city road network a dedication of land is necessary along the east side of the lane north of Shippee Ave being Block 152 on Plan 62M-950 to achieve an ultimate width of 20.117 metres.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Community Engagement and Participation

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.

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” to Report PW20032/PED20114: Sketch showing Private Laneway “Known as” Windemere Road

Appendix “B” to Report PW20032/PED20114: Registered Agreement SA49078 Dated February 11, 1952

Appendix “C” to Report PW20032/PED20114: Opening By-Law 1590 Registered as Instrument BL1479.