




CITY OF HAMILTON
PUBLIC WORKS DEPARTMENT
Engineering Services Division

TO:	Chair and Members Public Works Committee
COMMITTEE DATE:	April 19, 2021
SUBJECT/REPORT NO:	Proposed Permanent Closure and Sale of a Portion of Public Unassumed Alleyway Abutting 63 New Street, Hamilton (PW21021) (Ward 1)
WARD(S) AFFECTED:	Ward 1
PREPARED BY:	Marilyn Preston (905) 546-2424 Ext. 4298
SUBMITTED BY:	Gord McGuire Director, Engineering Services Public Works Department
SIGNATURE:	

RECOMMENDATION

That the application of the owner of 63 New Street, Hamilton, to permanently close and purchase a portion of the public unassumed alleyway, abutting the south side of 63 New Street, Hamilton, running east/west from the westerly limit of the alleyway to the east property limit of 63 New Street, Hamilton ("Subject Lands"), as shown on Appendix "A", attached to Report PW21021, 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) That the City Solicitor be authorized to amend and waive such terms as the City Solicitor considers reasonable to give effect to this authorization and direction;
 - (iii) The Real Estate Section of the Planning and Economic Development Department be authorized and directed to enter into any requisite easement agreements, right of way agreements, and/or other agreements deemed necessary to affect the orderly disposition of the Subject Lands and to proceed to sell the Subject Lands to the owner of 63 New Street, Hamilton, as described in Report PW21021, in accordance with the City of Hamilton Sale of Land Policy By-law 14-204;
 - (iv) The City Solicitor be authorized to complete the transfer of the Subject Lands to the owner of 63 New 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;
 - (v) The City Solicitor be authorized and directed to register a certified copy of the by-law permanently closing and selling the alleyway in the proper land registry office;
 - (vi) The Public Works Department publish any required notice of the City's intention to pass the by-law and/or permanently sell the closed alleyway pursuant to City of Hamilton Sale of Land Policy By-law 14-204.

EXECUTIVE SUMMARY

The owner of 63 New Street, Hamilton has applied to permanently close and purchase a portion of the public unassumed alleyway running east/west at the south side of the property, between 63 New Street and 428 Main Street West, located in the block

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bounded by Henry Street, Main Street West, Strathcona Avenue South and New Street, Hamilton. The Subject Lands extend from the entrance of the alleyway from New Street to the rear property limits of 63 New Street, Hamilton. There was a business located at 428 Main Street West which has now been demolished and the applicant is proposing to erect a fence between the properties to provide a buffer between 63 New Street and the now vacant lot at 428 Main Street West.

Alternatives for Consideration – N/A

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 owner of 63 New Street, Hamilton, for an amount 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 applicable by-laws. Any by-laws do not take effect until the certified copies of the by-laws are registered in the proper land registry office. The City Solicitor will complete the transfer of the Subject Lands to the owner of 63 New Street, Hamilton, pursuant to an agreement negotiated by the Real Estate Section of the Planning and Economic Development Department.

HISTORICAL BACKGROUND

The owner of 63 New Street, Hamilton had previously applied to permanently close the east/west alleyway abutting the south side of the property as well as the north/south alleyway which provides access to the east/west alleyway at the rear of properties fronting on Henry Street. After discussions with abutting property owners who did not wish to incur any costs, the applicant decided to alter the application and apply to permanently close and purchase only that portion of east/west alleyway abutting the south side of the property at 63 New 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*.

Alleyway Management Strategy - Classification System (Report PW17008(a)):

The Subject Lands are classified as Hierarchy Class "D": Alleyway is unassumed and could be used for any of the following:

- commercial parking;
- public/private waste collection;
- special consideration; and
- access to rear yards or overland flow routes

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

The Building Division has provided the following comments:

"Building Division records indicate that the alley abutting the residential properties has been continuously used for access purposes. This acquisition by the property owner would require that the alley be merged with the property located at 63 New Street. The portion of alley abutting 63 New Street is zoned "D" District along the northerly side of the alley and is zoned C5, Exception 300 under Zoning By-law 05-200 for the southerly side of the alley." If the property is sold to the owner of 63 New Street, "future access may be restricted to other users including 428 Main Street West. All development shall comply to the requirements of Hamilton Zoning By-law No. 6593 and Zoning By-law No. 05-200. All future fencing shall be developed in accordance with City of Hamilton Fence By-law 10-142."

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Bell has advised that they will require easement protection.

There were no objections received from any public utilities, City departments and divisions. The Ward Councillor is in support of the application.

Notice of the proposed closure and sale was sent to all property owners abutting the Subject Lands, as shown on Appendix "B", attached to Report PW21021 for comment. In this instance, there were 11 notices delivered, and the results are as follows:

In favour: 2

Opposed:2

No comment: 7

Those opposed were responding to an earlier, more extensive proposal, which would have closed two sections of the alleyway. The following comments were received from property owners abutting the alleyway on Henry Street regarding the original proposal: "For those using rear of property for extra parking, dual access allows access if one leg is blocked and it will be too challenging to get in and out of alleyway if closed off". However, the current proposal is to only close and sell the portion of alley directly abutting 63 New Street and access will remain from the alleyway abutting the properties on Henry Street.

The solicitor representing the owners of the property at 428 Main Street West, Hamilton, abutting the subject lands, has submitted the following comments on their behalf:

"We advise that we are opposed to the application. Notwithstanding, we are willing to consider closure with sale of 50% to each abutting owner. This would require further discussion"; and

"428 has initiated a Consultation Application (File No. FC - 18 - 107) with the City of Hamilton for redevelopment of its property ("428's Development"). Closure and sale to 63 would limit the development potential of 428's property."

The following policy concerns were stated in the correspondence:

The application is not supportive of numerous planning policy directions articulated in the Provincial Policy Statement, the Growth Plan for the Greater Golden Horseshoe, the Urban Hamilton Official Plan and the Strathcona Secondary Plan, all of which promote intensification on 428's property.

- The application will limit the development potential of 428's property for a mixed-use, mid-rise form of intensification as envisioned by the applicable planning framework. The existing alley provides vehicular access in the rear of 428's property, which allows for a consistent street wall and desirable

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pedestrian experience to be established along Main Street West, consistent with the UHOP and Secondary Plan policies.

- The existing alley provides separation distance and acts as a buffer between the intensification corridor along Main Street West and the stable residential neighbourhood to the north, achieving an appropriate a transition from higher density forms to lower ones, in accordance with applicable urban design and built form policies.”
- The existing alley is connected to other alleys, which provide vehicular access to neighbouring properties. The permanent closure of the subject alley would result in a single access point for the other existing alley to the north and could potentially create a safety risk as there would be no alternative exits.
- The proposed redevelopment of 428's property has a functional need for the alley, as it provides both vehicular access and a buffer to the adjacent low-rise residential properties. The permanent closure of the alley may create traffic conflicts, given its proximity to the intersection of Main Street West, that could potentially result in undesirable vehicular access points along Main Street West.
- Rear alleys along intensification corridors provide an integral component in facilitating gradual redevelopment of these corridors consistent with the midrise built form, envisioned by the UHOP and Secondary Plan.

There were no further comments received regarding the proposal.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

As there were no objections from any City department, divisions, or public utilities, and as any objections received from abutting land owners have been addressed, except for those of the owner of 428 Main Street West, staff are supportive of the closure and sale of the Subject Lands to the owner of 63 New Street, Hamilton.

ALTERNATIVES FOR CONSIDERATION

None

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” to Report PW21021 - Aerial Drawing

Appendix “B” to Report PW21021 - Location Plan