



CITY OF HAMILTON
PUBLIC WORKS DEPARTMENT
Engineering Services Division

TO:	Chair and Members Public Works Committee
COMMITTEE DATE:	March 21, 2022
SUBJECT/REPORT NO:	Streamlining the Process for Incorporating City Reserve Lands, City Widening, and Legacy Widening into Public Highway (PW22013) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	David Lamont (905) 546-2424 Ext. 4413
SUBMITTED BY:	Edward Soldo, P.Eng. Chief Road Official Public Works Department
SIGNATURE:	

RECOMMENDATION

- (a) That Item 7 of the Planning and Economic Development Committee Report 10-005 as approved by Council on March 10, 2010 be repealed in its entirety;
- (b) That the General Manager of Public Works, or their delegate, be authorized and directed to prepare by-laws under the provisions of Subsection 31(2) of the Municipal Act, as amended, and place before Council for enactment, to incorporate:
 - (i) City Reserve Lands into public highway, provided:
 - (1) The incorporating by-laws are in a standard form satisfactory to the City Solicitor;
 - (2) The General Manager of Planning and Economic Development has confirmed that all outstanding requirements with respect to the reserve lands have been completed to the satisfaction of the City;
 - (ii) City Widening into public highway, provided:

SUBJECT: Streamlining the Process for Incorporating City Reserve Lands, City Widening, and Legacy Widening into Public Highway (PW22013) (City Wide) - Page 2 of 7

- (1) The incorporating by-laws are in a standard form satisfactory to the City Solicitor;
- (2) The General Manager of Planning and Economic Development has confirmed that all outstanding requirements with respect to the Widening lands have been completed to the satisfaction of the City;
- (iii) Legacy Widening into public highway, provided;
 - (1) The incorporating by-laws are in a standard form satisfactory to the City Solicitor.
 - (2) The General Manager of Planning and Economic Development has confirmed that all outstanding requirements with respect to the Legacy Widening lands have been completed to the satisfaction of the City;

EXECUTIVE SUMMARY

The need for Report PW22013 has arisen from a Ministry of Government Services bulletin issued in December 2009 in Report PED10051 to all land registry offices prohibiting the practice of Municipal Self to Self Transfers to incorporate City of Hamilton (City) reserve land into public highway. The City has been using this method as a solution to the very inefficient and time-consuming process of preparing staff reports to the City's standing committee for approval before adoption by Council for each City reserve that required preparation and registration of a by-law to incorporate the reserve land into public highway. Approximately 30 to 50 reserves are incorporated into public highways each year.

Since the enactment of the Municipal Act, 2001, Subsection 31(6) in 2003, land acquired by a municipality for the purpose of a road widening forms part of the highway. A by-law is not required. There are occasions where the City requires a widening over a portion of land already owned by the City. Since Subsection 31(6) does not apply, the only way to incorporate or transfer the City's land asset to a road asset (widening) as a public highway is through passage of a by-law.

Prior to January 1, 2003 land transferred to the municipality for the purpose of a road widening required a by-law to be incorporated into the public right-of-way. This is what we are referring to as legacy widenings within the context of this report. Any document prior to this date required a by-law to be passed whether it was the creation of a new road or of a widening.

SUBJECT: Streamlining the Process for Incorporating City Reserve Lands, City Widening, and Legacy Widening into Public Highway (PW22013) (City Wide) - Page 3 of 7

In order to maintain an efficient level of service that the City has provided, staff is seeking delegated authority to prepare and submit incorporating by-laws directly to Council to incorporate reserves and widenings only, without the need to prepare a staff report to the City's standing committee for each by-law, to avoid the City's lengthy report cycle.

In virtually every case where a reserve or widening is to be incorporated into public highway it is done to allow development of land that has gone through the City's planning process under some form of development application that has received approval by the City. Therefore, incorporation of reserve or widening lands into the City's public highway is simply the final step in the planning approval process to allow development to proceed. No further review or approval by the City should be required at this late period in the development process other than adoption of the incorporating by-law.

The recommendations in the report are consistent with the City's Open for Business philosophy to provide higher level of service to help facilitate the needs of the development industry and general public.

Alternatives for Consideration – See Page 6

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: N/A

Staffing: Preparation of the Incorporating By-Laws can be accommodated within the departmental workplans and no additional staff resources will be required.

Legal: N/A

HISTORICAL BACKGROUND

A reserve is a narrow strip of City land, usually 0.3 m wide, which is used to physically separate private land from the abutting public highway. Reserves are established by the City and generally used as a mechanism to control access to, and development of, the abutting private land. Without direct access to a public highway, the private lands that are encumbered by a reserve cannot meet the requirements of the City's zoning by-law, and therefore, development cannot proceed on the land. In almost all cases there is one or more requirements of the City which must be satisfied by the abutting private land owner before a reserve can be incorporated into the public highway (e.g. the owner may be required to pay for outstanding servicing costs).

SUBJECT: Streamlining the Process for Incorporating City Reserve Lands, City Widenings, and Legacy Widenings into Public Highway (PW22013) (City Wide) - Page 4 of 7

The need to establish a reserve is usually identified by the City upon review of a developer's plan of subdivision. Reserves are usually established along one side, or at the dead-end, of a road allowance where a road abuts vacant, undeveloped land. When a subdivision plan with a reserve is registered, the reserve land is transferred to the City by the subdividing landowner by registration of a transfer deed.

Up until a few years ago the City incorporated reserves into the public highway by preparation and registration of an incorporating by-law, which required preparation of a staff report to the City's standing committee before the incorporating by-law could be approved by Council. Reserve lands were incorporated into public highway on a case by case basis and each incorporating by-law was subjected to the City's lengthy report cycle. This process was very inefficient because there was approximately a six-week delay between the time when a reserve could be incorporated into public highway and when Council ultimately approved the by-law for registration of the by-law. Landowners developing land encumbered by a reserve were often frustrated by the delays of this process.

To streamline the process the City began incorporating reserves into the abutting road allowance, using the provisions of subsection 31(6) of the Municipal Act, by registering a transfer deed at the Registry Office that conveys the land from the City to the City as a widening to the abutting public highway (Municipal Self to Self Transfers). Upon registration of the transfer deed the reserve land became part of the public highway. This process was extremely efficient because, once a landowner satisfied all requirements with respect of a reserve, City staff could incorporate the reserve into the public highway very quickly without any delay to the developing landowner. Unfortunately, in December 2009, the Ministry of Government Services for the province issued a Bulletin (No. 2009-08, entitled "Municipal Self to Self Transfers") to all land registry offices prohibiting this practice as outlined in Report PED10051.

Prior to the enactment of the Municipal Act, 2001 the only way to incorporate road widenings into the City road was by preparation and registration of a by-law. On a regular basis the City is approached by constituents with legacy widenings who have transferred lands to the City of Hamilton or, prior to amalgamation, the municipalities that made up the former Regional Municipality of Hamilton-Wentworth, for the purpose of a road widening and the widenings were never incorporated into public highway. As a result, these properties do not have frontage on a public road. In addition, since subsection 31(6) of the Municipal Act only applies to lands being acquired by the City it cannot be applied to widenings over City owned property.

In light of the foregoing, the City has no other means to incorporate reserve lands, legacy widenings or City widenings into public highway and must resort to the old report process of preparation and registration of incorporating by-laws. To maintain an efficient

SUBJECT: Streamlining the Process for Incorporating City Reserve Lands, City Widenings, and Legacy Widenings into Public Highway (PW22013) (City Wide) - Page 5 of 7

level of service that the development industry has now become accustomed to, staff is seeking authority to streamline this process by submitting incorporating by-laws directly to Council, without the need to prepare a staff report to the City's standing committee for each by-law.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

There are no policy implications as a result of the recommendation in this report. The purpose of this report is to streamline the City's process to incorporate City reserve lands, City widenings, and legacy widenings into public highway.

RELEVANT CONSULTATION

This report has been prepared on advice provided by the City Solicitor and in consultation with staff from the Growth Management Division of the Planning & Economic Development Department.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

Incorporation of City reserve and legacy widening lands into public highway almost always results from an application received by the City to develop or subdivide land. As a result, the land has been subjected to the City's planning review process and has satisfied all conditions of the City with respect to planning, engineering, and zoning requirements. Incorporation of City reserve and legacy widening lands into the City's public highway is the final step of that planning review and approval process.

It is the opinion of staff that subjecting a land owner or developer to additional time delays associated with preparation of a staff report that must pass through the City's internal report cycle for approval by the City's standing committee before adoption by Council is inappropriate at such a late stage in the development approval process for land that has already received approval by the City. Preparation of staff reports for each incorporating by-law would not be consistent with the City's "open for business" philosophy to provide higher level of service to help facilitate the needs of the development industry and general public.

The inclusion of subsection 31(6) of the Municipal Act 2001 supports the premise that lands transferred to the municipality for the purpose of a road widening should logically become incorporated into the public highway. Staff is of the opinion that subjecting legacy widenings and City widenings to the rigors of the report process puts an undue strain on City resources. Furthermore, Schedule C-2 of the City's Official Plan entitled, Future Right-of-Way Dedications specifies the future and ultimate road allowance widths of the City's collector and arterial road network. The City's Official Plan is a

SUBJECT: Streamlining the Process for Incorporating City Reserve Lands, City Widenings, and Legacy Widenings into Public Highway (PW22013) (City Wide) - Page 6 of 7

Council approved policy document wherein the ultimate requirements and direction for acquisition of land for road allowance has been specified and approved by the City. Incorporation of these lands into public highway by by-law is in fulfillment with the direction under the City's Official Plan and for this reason it is the opinion of staff that further Council approval on a case by case basis is unnecessary.

ALTERNATIVES FOR CONSIDERATION

There is one alternative staff considered in addressing the Ministry's bulletin prohibiting the process of municipal self to self-transfers to incorporate City reserve lands, legacy widenings and City widenings into public highway.

The alternative is to continue the City's previous process of only having authority as approved by Planning and Economic Development Committee Report 10-005 as approved by Council on March 10, 2010 for Reserve lands only and to continue to prepare reports to Council to incorporate legacy widenings and City widenings into public highway on a case by case basis. This alternative would create time delays as this is subject to standing committee and Council meeting schedules. This process was particularly cumbersome during the summer months, when Council meetings are less frequent and development activity is most active.

Financial: N/A

Staffing: Subjecting reserves, legacy widenings and City widenings to the rigors of the report process increases City staff work load.

Legal: N/A

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

Economic Prosperity and Growth

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

Healthy and Safe Communities

Hamilton is a safe and supportive City where people are active, healthy, and have a high quality of life.

SUBJECT: Streamlining the Process for Incorporating City Reserve Lands, City Widenings, and Legacy Widenings into Public Highway (PW22013) (City Wide) - Page 7 of 7

Built Environment and Infrastructure

Hamilton is supported by state-of-the-art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

Our People and Performance

Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED

Not applicable