




CITY OF HAMILTON
PUBLIC WORKS DEPARTMENT
Environmental Services Division

TO:	Chair and Members Public Works Committee
COMMITTEE DATE:	June 13, 2022
SUBJECT/REPORT NO:	White Brick Church Cemetery (PW22050) (Ward 12)
WARD(S) AFFECTED:	Ward 12
PREPARED BY:	John Perrotta (905) 546-2424 Ext. 4402
SUBMITTED BY:	Cynthia Graham Acting Director, Environmental Services Public Works Department
SIGNATURE:	

RECOMMENDATIONS

- (a) That staff be authorized and directed to acquire the lands located at 99 Garner Road East, Ancaster, ON L9G 3K9, as shown in Appendix "A" attached to Report PW22050, subject to the condition described in Recommendation (b) of Report PW22050, on an as-is, where-is basis, and assume the operation of the White Brick Church Cemetery located on the Lands, currently operating under operator #3275208, site #01260 as registered with the Bereavement Authority of Ontario, for nominal consideration and on such additional terms and conditions deemed appropriate by the General Manager of Public Works, or their delegate; and,
- (b) That staff be directed to determine whether, in fulfilling the direction to acquire the White Brick Church Cemetery, a smaller portion of the Lands excluding the building may be acquired by the City in conformity with the applicable Official Plan and Zoning By-law and any other applicable City policies and By-laws, and in the event staff determine that a smaller portion may be acquired, that the lands to be acquired in accordance with Recommendation (a) of Report PW22050 be reduced accordingly and staff be directed to obtain a reference plan describing the portion of the Lands to be acquired; and,
- (c) That the Cemeteries Section annual operating budget request of \$15,000 be referred to the 2023 tax operating budget process for consideration; and,

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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.

- (d) That Real Estate and Legal fees estimated at \$2,500 be funded from existing budget under Cemeteries Dept. ID 492001, and be transferred to Dept. ID 812036 (Real Estate – Admin Recovery), Account 59806 in the Planning & Economic Development Department; and,
- (e) That the General Manager of Public Works be authorized and directed to execute all documentation necessary to transfer ownership of the White Brick Church Cemetery, including all assets and the care and maintenance trust fund money of the Cemetery, together with any ancillary documentation required to give effect to the Recommendations in (a), in a form satisfactory to the City Solicitor or their delegate; and,
- (f) That the City Solicitor or their delegate be authorized and directed to take all necessary steps, and execute all necessary documents to complete the transaction, including paying any necessary expenses, amending the closing, due diligence and other dates, and amending and waiving terms and conditions on such terms deemed reasonable; and,
- (g) That the Mayor and City Clerk be authorized and directed to execute all necessary documents respecting the transaction in a form satisfactory to the City Solicitor or their delegate; and,
- (h) That By-law 12-151 being A By-law Respecting the City of Hamilton's Cemeteries, as amended, be further amended to include the White Brick Church Cemetery in Part 2- List of Cemeteries Owned and Operated by Hamilton Municipal Cemeteries following transfer of ownership and operations of the Cemetery to the City of Hamilton.

EXECUTIVE SUMMARY

The Bereavement Authority of Ontario (BAO) is the delegated authority that administers provisions of the Funeral, Burial and Cremation Services Act, 2002 (FBCSA) on behalf of the Ministry of Government and Consumer Services (MGCS). The FBCSA and associated Ontario Regulations, specifically Ontario Regulation 30/11, provides that an abandoned Cemetery become the responsibility of the local municipality. A municipality may voluntarily accept the transfer of responsibility for a Cemetery, together with a transfer of the land on which the Cemetery is situated. Alternatively, the municipality/Crown, the Registrar or the owner/operator of the Cemetery may apply to the Ontario Superior Court of Justice for an order of abandonment, which results in the municipality being required to take ownership and care responsibilities for the Cemetery.

Cemeteries staff understand that the City of Hamilton (City) can voluntarily accept White Brick Church Cemetery, shown in Appendix "A" attached to Report PW22050. If the City

does not accept it voluntarily, the staff at MGCS have indicated that they will file a court order to declare the Cemetery abandoned, in which case the City will be required to accept the Cemetery per the legislation. The voluntary acceptance is the least costly of the options that will result in the same outcome. Therefore, Recommendation (a) of Report PW22050 directs staff to voluntarily accept the Cemetery to avoid the additional costs associated with the legal proceedings.

Legislatively, the City is only required to accept the cemetery burial land area. The church located on the property is still actively used and it is not the desire of the staff to acquire the building. Cemetery and Real Estate staff will work with the MGCS and current land owners to establish a new property boundary for the transfer of the cemetery lands only to City ownership. Recommendation (b) of Report PW22050 provides staff with the flexibility to adjust the property boundary once formal discussions begin with MGCS and the land owner.

Alternatives for Consideration – See Page 6

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: The Parks and Cemeteries Section, Environmental Services Division will require a budget increase in the amount of \$15,000 in the annual operating budget, to be referred to the 2023 operating budget. This newly acquired Cemetery site will require regular grounds maintenance consistent with all other City owned Cemeteries. This budget impact is estimated based on current cemeteries in similar size. The Cemetery has a care and maintenance fund, with a value of \$6,000 as of 2022 and this will be required to be turned over to the City and added to the City's current Care and Maintenance trust fund.

Real Estate and Legal fees, estimated at \$2,500, are required to fund the necessary work to transfer ownership. There are existing funds available in Cemeteries Dept. ID 492001, to be transferred to Dept. ID 812036.

Staffing: There are no staffing implications associated with the recommendation in this report. The existing staff complement is anticipated to be capable of maintaining this additional Cemetery.

Legal: Legal Services will be required to assist in the preparation of the documentation required to complete the transfer as contemplated in Report PW22050 and prepare the necessary amendment to By-law 12-151.

HISTORICAL BACKGROUND

On November 26, 2021, City Cemetery staff received a letter from Mr. Michael D’Mello, Deputy Registrar of the BAO, advising that White Brick Church Cemetery (the Cemetery), which is located within the geographical boundaries of the City, is no longer being maintained to an acceptable standard. Parks and Cemeteries staff were requested to visit or contact the Cemetery owner/operator to discuss the condition, operations and care of the Cemetery.

On December 14th, 2021, Parks and Cemeteries staff were able to locate the Cemetery owners/operators and provided their contact information to the BAO to further discuss their compliance with the applicable legislation.

On January 5th, 2021, John Perrotta, Cemetery Superintendent received a telephone call from Mr. Michael D’Mello, requesting that the City voluntarily take over the operation of the Cemetery. The current owners/operators have agreed that they can no longer maintain the Cemetery grounds and are willing to transfer the Cemetery, including all assets, Cemetery records and care and maintenance trust fund money, to the City.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The *Funeral, Burial and Cremation Services Act, 2002* and Regulations made thereunder establish a process for the declaration of a Cemetery as abandoned. This legislation applies to cemetery lands only, and the City would not be obligated to accept the church that is part of the land parcel as shown in Appendix “A” attached to Report PW22050.

RELEVANT CONSULTATION

Corporate Services Department - Legal and Risk Management Services Division –
Legal Services Section
Planning and Economic Development Department - Economic Development Division -
Corporate Real Estate Office
Finance and Corporate Services Department, Financial Planning Administration &
Policy Division, Finance and Administration Section

ANALYSIS AND RATIONALE FOR RECOMMENDATION

The Burial Authority of Ontario (BAO) has a duty to ensure that all cemeteries in Ontario are appropriately maintained in perpetuity. The 2020 Auditor General of Ontario’s Report – Value for Money Audit, identifies the maintenance and protection of cemeteries as a priority endeavour for the BAO as cemeteries are of heritage significance to the community and the Province.

Recommendation 3 under Section 4.2.1 of the Value for Money Audit, referring to Cemetery operators who have not renewed their operating licences, advises that all Cemetery operators that conduct business in Ontario are licensed to do so, and cannot be licensed if they are not operating appropriately. Part of the recommendation states that the BAO “make arrangement with local municipalities to take over those Cemetery operators with expired licenses that cannot be located or are unable to continue managing their cemeteries in perpetuity”.

Where a Cemetery owner cannot be located or is unknown, is unable to maintain the Cemetery, or is not licensed to operate the Cemetery, Section 101.1 of the Funeral, Burial, Cremation Services Act (FBCSA) permits the Crown/local municipality as applicable, the registrar, or the owner/operator of a Cemetery to apply for a declaration that a Cemetery has been abandoned. Upon the making of an application, the Crown/local municipality as applicable is responsible to maintain the Cemetery until the application is disposed of and is also responsible for the costs (included a survey) associated with the application unless the owner has made the application and the court refuses to declare the Cemetery abandoned. Where the court makes an order declaring that a Cemetery is abandoned, the Crown/local municipality as applicable becomes the owner of the Cemetery (with all the rights and obligations in respect of the Cemetery and the assets, trust funds and trust accounts related to it that the previous owner or operator had) upon registration of the order in the appropriate land registry office.

If the City does not voluntarily accept the ownership and operation of the Cemetery, it is staff's understanding that the MGCS will initiate the abandonment process, where an order of abandonment is sought through the Ontario Superior Court of Justice. Where satisfied that the circumstances justifying an Order have been established, a Judge must declare the Cemetery abandoned. Where the Cemetery is declared abandoned, the cost of the application for abandonment (including any survey required) are the responsibility of the municipality. The approximate cost of the application is \$18,000 to \$20,000. In addition to the above, the City will also be responsible for the maintenance of the Cemetery until the application is disposed of. As the current owners/operators have advised the BAO they can no longer maintain the Cemetery, it is anticipated that, upon an application to the court, a Judge would make an order declaring the Cemetery to be abandoned. A voluntarily acceptance of the Cemetery will avoid unnecessary costs associated with an application of abandonment to the Ontario Superior Court of Justice.

The BAO has advised that the Cemetery had a care and maintenance fund of \$22,060.27 as of 2020. The City has been informed by the BAO that the current owners/operators of the Cemetery have purchased grass maintenance equipment in the amount of approximately \$16,000 with these care and maintenance funds, and therefore, the remaining balance of the care and maintenance fund is approximately \$6,000. The exact amount has not been confirmed by the BAO. As part of the transfer of this Cemetery to the City, the balance of these funds and equipment will be

transferred to the existing City care and maintenance trust fund to assist in offsetting any shortfalls in the annual operating budget. While the \$6,000 would contribute to funding the maintenance of the Cemetery, it is not a sufficient amount for the level of care required and expected for City owned cemeteries, therefore staff will be submitting an operating budget increase to be considered as part of the 2023 Operating Budget process.

The BAO has listed the Cemetery as active, meaning the Cemetery operator has, since January 1, 1995, sold interment rights, conducted burials and has unexercised interment rights. The City will have an opportunity to generate revenue while performing burials for existing interment rights, as well as the sale of available interment rights and associated Cemetery supplies and services. It is unknown if the potential annual revenues will offset the annual operating costs of the Cemetery. Staff also do not yet know how many unsold lots are available at this Cemetery.

Voluntarily accepting the Cemetery would require City staff to work with the current owners/operations and negotiate the transfer of the Cemetery to the City.

ALTERNATIVES FOR CONSIDERATION

If Council does not direct staff to voluntarily accept ownership of the Cemetery, the BAO will refer the file to the MGCS to file an application of abandonment. The Ontario Superior Court of Justice will determine if the Cemetery should be deemed an abandoned Cemetery.

Financial: If the Cemetery is deemed abandoned, the City will incur costs for the application of abandonment in the approximate amount of \$18,000 to \$20,000. Operating impacts include an increase of \$15,000 in the annual operating base budget, beginning in 2023, in order to maintain the Cemetery to current City maintenance standards. Real Estate and Legal fees are estimated at \$2,500 and will be transferred to Dept. ID 812036.

If the Cemetery is not declared to be an abandoned Cemetery, there will be no financial impact on the City; however, the City will be responsible for maintenance of the Cemetery until the application is finally disposed of.

Staffing: There are no staffing implications associated with the recommendation in this report. If the Cemetery is deemed abandoned, the existing staff complement is anticipated to be capable of maintaining this additional Cemetery.

Legal: There are no legal implications associated with this alternative. However, if the Cemetery is deemed abandoned, Legal Services will be required to gather information for the Superior Court of Justice, participate in hearings and communications as required, assist in the preparation of the

documentation required to complete the transfer as contemplated herein and prepare the necessary amendment to By-law 12-151, as amended.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Culture and Diversity

Hamilton is a thriving, vibrant place for arts, culture, and heritage where diversity and inclusivity are embraced and celebrated.

Our People and Performance

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

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” attached to Report PW22050 - Map of White Brick Church Cemetery