



**CITY OF HAMILTON**  
**PUBLIC WORKS DEPARTMENT**  
Hamilton Water Division  
and  
**CORPORATE SERVICES DEPARTMENT**  
Legal and Risk Management Services Division

<b>TO:</b>	Chair and Members Public Works Committee
<b>COMMITTEE DATE:</b>	September 26, 2022
<b>SUBJECT/REPORT NO:</b>	Request for By-law Amendments Respecting 386 Wilcox Street (PW22083/LS22033) (City Wide)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Shane McCauley (905) 546-2424 Ext. 1020 Patrick MacDonald (905) 546-2424 Ext. 4708 Norm Schleeahn (905) 546-2424 Ext. 2669
<b>SUBMITTED BY:</b> <b>SIGNATURE:</b>	Nick Winters Director, Hamilton Water Division Public Works Department 
<b>SUBMITTED BY:</b> <b>SIGNATURE:</b>	Ron Sabo Acting City Solicitor, Legal Service Division Corporate Services Department 

**RECOMMENDATION**

That Slate HWF L.P.'s request for an exemption to the City of Hamilton's (City) Sewers and Drains By-law No.06-026 and the City's Waterworks By-law R84-026 be refused.

**EXECUTIVE SUMMARY**

At the September 6, 2022 Planning Committee meeting staff were directed to report back to the Public Works Committee on Slate HWF L.P.'s ("Slate") request to make an exemption to the City's Sewers and Drains By-law No.06-026 and the City's Waterworks

---

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.

**SUBJECT: Request for By-law Amendments Respecting 386 Wilcox Street  
(PW22083/LS22033) (City Wide) Page 2 of 9**

---

By-law R84-026 for 386 Wilcox Street, Hamilton. Amendments to these by-laws would be required in order to advance the redevelopment and transformation of the Stelco lands.

Stelco, the prior owner of the property, had previously proposed multiple consents to sever the same lands that would have created seven (7) new lots on 386 Wilcox Street. The new approach, as proposed by Slate and as conditionally approved by the Committee of Adjustment, significantly reduces that number, but still results in more properties sharing sewer and water servicing connections than is allowed by the by-laws.

From an infrastructure management perspective, staff are not in a position to support making the requested by-law amendments, as they would be contrary to recommendations that Hamilton Water intends to bring to Council for approval in mid to late 2023, that individual properties be required to have their own dedicated water and wastewater servicing (no shared service connections). There is also the potential that the amendments could risk setting an undesirable precedent for development activity throughout the City, although staff do note and acknowledge that the subject lands are unique in the City given their scale and historical use.

From a development perspective, Planning and Economic Development staff note the unique and complicated nature of the subject lands and the clear challenges that any redevelopment will have in meeting the by-law requirements, and have expressed concern that not moving ahead with the requested by-law amendments would negatively impact the City's ability to achieve targets set out in the City's 2021-2025 Economic Development Action Plan by delaying or complicating the potential redevelopment of 386 Wilcox Street. Redevelopment of 386 Wilcox Street is projected to create better land use efficiencies, improve access, and bring highly sought-after industrial land supply to the market. An economic study conducted by Ernst & Young Global Limited estimates that the redevelopment of the subject property has the potential to create up to 23,000 new jobs across the Greater Toronto & Hamilton Area and inject up to \$3.8 billion into Ontario's economy.

Staff have recommended in this report that the request for by-law amendments be refused. However, within the Alternatives for Consideration section of the report, staff have provided a fulsome alternative for Council's consideration that would direct staff to make the necessary by-law amendments working with Legal Services staff to mitigate the infrastructure management and precedent concerns in the best way possible.

## **ALTERNATIVES FOR CONSIDERATION**

As an alternative, Council can direct staff to make the necessary by-law amendments, which is described in greater detail on Page 8.

**FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

Financial: N/A

Staffing: N/A

Legal: N/A

**HISTORICAL BACKGROUND**

On November 25, 2021, the Committee of Adjustment heard and conditionally approved two (2) consent applications by MHBC Planning on behalf of the owner, Stelco Inc. (“Stelco”), for 386 Wilcox Street. The purpose of these applications (HM/B-21:97, HM/B-21:98) was to permit the severance of one (1) parcel of land and to retain one (1) parcel of land (refer to Appendix “A” to Report PW22083/LS22033); and to allow for a long-term lease of the Severed Lands in excess of 21 years. A copy of the decisions and respective conditions of approval for the consent applications are attached as Appendix “B” to ReportPW22083/LS22033.

As per Stelco’s Application for Consent/Land Severance (HM/B-21:98), the purpose of the severance is to create a new lot for conveyance purposes, including transfers and mortgages. The Severed Lands would be conveyed to new ownership and a long-term lease would be entered into with Stelco for the Severed Lands to allow for the continued operation of Stelco’s cold steel rolling plant. According to Slate (who purchased the lands on June 1, 2022), the conveyance and long-term lease of the Severed Lands is to facilitate appropriate financial and risk management measures required by the nature of Stelco’s steel manufacturing operations.

In accordance with the *Planning Act*, there is a two-year time period granted to fulfill conditions or the application for consent shall be deemed to be refused. The expiry date for the severance application is December 2, 2023. Despite the additional time available to satisfy the conditions, Slate has advised the City that a condition of its financing arrangement to develop the property requires that the conditions for consent be satisfied by the end of October 2022.

The conditions for consent application HM/B-21:97 for a long-term lease were satisfied on March 15, 2022. Slate is currently working with the City to satisfy the remaining conditions of consent application HM/B-21:98. Condition 2 of consent application HM/B-21:98, which required a Holding Provision be placed on the retained portion of the lands, was satisfied by the passage of By-law 22-069 by Council on April 13, 2022. The main purpose for the Holding Provision is to make sure that redevelopment of the site does not occur until a Master Servicing Study and a Concept Plan showing land uses and phasing are submitted to the satisfaction of the City. The Master Servicing Study

**SUBJECT: Request for By-law Amendments Respecting 386 Wilcox Street  
(PW22083/LS22033) (City Wide) Page 4 of 9**

---

also has to conform to the current sewer and water by-laws. Condition 10 of consent application HM/B-21:98 requires that the Owner enter into and register on title a Development Agreement and/or a Joint Use Agreement, if necessary.

A Joint Use Agreement that meets the requirements of the City's Sewers and Drains, and Waterworks By-laws is already in place for the three (3) existing parcels of land; Max Aicher North America (MANA) (North) (1155 Industrial Drive), MANA (South) (855 Industrial Drive) and Slate (386 Wilcox Street). However, the completion of the severance would result in four separate parcels of land, all of which would have interconnected water and sewer services which is not permitted under the Sewers and Drains, and Waterworks By-laws.

Stelco, the prior owner of the property, previously received conditional approval from the Committee of Adjustment on October 10, 2019 for multiple consents to sever that would have created seven (7) new lots on 386 Wilcox Street. Stelco subsequently made a request to Council for a site-specific amendment to the City's Sewers and Drains, and Waterworks By-laws. At its meeting on December 16, 2020, Council approved the recommendations contained in report PED20220/PW20067/LS20037 Stelco Inc. Severances – 386 Wilcox Street, Hamilton which had included the following direction with respect to that previous proposal and the previous consent approach:

- (a) That staff be directed to advise Stelco that it will not satisfy all Conditions of the Committee of Adjustment decisions dated October 10, 2019, including Conditions 6 and 7, until and unless:
  - (i) Stelco submits a comprehensive infrastructure strategy plan ("Master Servicing Plan") with sufficient details to meet the private and municipal servicing requirements of the City of Hamilton to the satisfaction of the General Manager of the Public Works Department and the General Manager of the Planning and Economic Development Department; and
  - (ii) Stelco executes a Development Agreement substantially in the form already proposed by City staff that is approved by the the General Manager of the Public Works Department, the General Manager of the Planning and Economic Development Department and the City Solicitor;
- (b) That staff be directed to advise Stelco that should it not satisfy all Conditions of the Committee of Adjustment decisions dated October 10, 2019 by January 22, 2021, that any subsequent applications to develop Stelco's lands located at 386 Wilcox Street, Hamilton proceed by way of applications for a plan of subdivision or a plan of condominium;

- (c) That staff be directed to advise Stelco that any applications to develop Stelco's lands located at 386 Wilcox Street, Hamilton proceed such that amendments to the City's Sewers and Drains By-law No.06-026 and the City's Waterworks By-law R84-026 are not necessary

As described above, following discussions with Planning staff, a new approach has been undertaken and a new Committee of Adjustment approval was sought and received, and significant work has been undertaken by the applicant to meet the Committee of Adjustment conditions and advance a transformational redevelopment of the lands. The updated plans have significantly reduced the need for amendments to the City's Sewers and Drains By-law, however exemptions would still be needed for the redevelopment to advance, which is the subject of this report.

### **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

The City's Sewers and Drains By-law No.06-026 and the City's Waterworks By-law R84-026 currently permit shared service connections for up to three (3) industrial, commercial, institutional (ICI) or condominium corporation properties respectively.

Hamilton Water staff intend to bring updated Sewers and Drains, and Waterworks By-laws to Council in mid to late 2023, that include amendments that will require that individual properties have their own dedicated water and wastewater servicing (no shared service connections). These amendments are based on municipal best practices and staff's experience dealing with shared service connections.

### **RELEVANT CONSULTATION**

The following groups have been consulted or informed and are supportive of the recommendations of this Report:

- Public Works Department – Hamilton Water Division
- Planning and Economic Development Department – Growth Management
- Planning and Economic Development Department – Economic Development
- Planning and Economic Development Department – Planning
- Corporate Services Department – Legal and Risk Management Services

### **ANALYSIS AND RATIONALE FOR RECOMMENDATION**

On September 6, 2022, through delegation, Slate made a request to Planning Committee to enact amendments to the Sewers and Drains, and Waterworks By-laws to allow for up to four (4) parcels of land to share a single service connection, with an approved Joint Use Agreement in place.

**SUBJECT: Request for By-law Amendments Respecting 386 Wilcox Street  
(PW22083/LS22033) (City Wide) Page 6 of 9**

---

In discussions with Slate, their stated intent is that the by-law amendments would be site specific and temporary, while they develop a Concept Plan and a Master Servicing Strategy that will be to the satisfaction of the City (as required by the Holding Provision). Slate has further offered to place a restriction on further transfers of the retained and severed lands under the *Land Titles Act* (excepting the initial transfer to complete the severance), to be secured through separate agreements with the City required as a condition of consent approval.

Despite the significant reduction in the number of new properties proposed to be created through the current application compared to Stelco's prior application in 2019, the requested severance would still result in more properties sharing sewer and water servicing connections than is allowed by the by-laws.

While the current versions of By-laws R84-026 and 06-026 permit shared connections for up to three (3) properties where prior approval is provided by the City and they enter into and register on title a Joint Use Agreement, Hamilton Water staff intend to bring updated Sewers and Drains, and Waterworks By-laws to Council in mid to late 2023, that include amendments that will require that individual properties have their own dedicated water and wastewater servicing (no shared service connections).

A Joint Use Agreement that meets the requirements of the City's Sewers and Drains, and Waterworks By-laws is already in place for the existing three (3) parcels of land; MANA (North) (1155 Industrial Drive), MANA (South) (855 Industrial Drive) and Slate (386 Wilcox Street). If the requested by-law amendments were approved, an updated Joint Use Agreement would also need to be created.

Joint servicing arrangements on private lands have inherent difficulties. They depend on an intricate pattern of cross easements and joint maintenance obligations and operate in a context when most of the private participants wish to avoid capital expenditures. These agreements must be carefully constructed so that they operate as an exception to the general prohibition at common law for positive covenants running with lands.

Ultimately, there will be as many parties to the private arrangements as there are eventual lot owners, and in the event that the private arrangements break down and there are disputes, they are settled in court. Even when they are settled in court and a judgment has been rendered, decisions are not self-enforcing, and there are considerable difficulties in collecting monies even when a judgment is in place, especially when there are many creditors and particularly when the other creditors are secured. While the City is a party to its standard Joint Use Agreement, it is generally left to the private parties to resolve disputes between them as described above. However, in practice, the City often finds itself drawn into these types of disputes between owners.

**SUBJECT: Request for By-law Amendments Respecting 386 Wilcox Street  
(PW22083/LS22033) (City Wide) Page 7 of 9**

---

Hamilton Water's concerns related to amending the by-laws are rooted in the protection and management of the City's water and wastewater infrastructure. More specifically the concerns include:

- The precedent it could set for other development projects to request further site-specific amendments to City by-laws eroding the intent and integrity of the by-laws which in this instance are meant to govern the water and wastewater systems ensuring adequate servicing, public health and safety, and supporting appropriate management of City assets;
- Due to the complex interconnectivity of the water and sewer systems across the proposed four (4) parcels, staff's view is that there is no guarantee that the future Concept Plan and Site Servicing Strategy will meet the requirements of the existing or amended by-laws;
- The Holding Provision only applies to the retained portion of 386 Wilcox Street and the voluntary restriction on further transfers of lands under the *Land Titles Act* that Slate has proposed would only apply to the retained and severed lands. In all cases the MANA lands are excluded from these protections;

Slate is required to provide a Concept Plan and a Master Servicing Strategy, as required by the Holding Provision. Due to the vast existing infrastructure and complex interconnectivity of the water and sewer systems across the proposed four (4) parcels; and no known agreements with MANA for the future separation of services, staff's view is that there is no guarantee that the future Concept Plan and Master Servicing Strategy will meet the requirements of the existing or amended by-laws.

It should also be noted that in their application for Consent of Severance HM/B-21:98 the Owner states:

Under the proposed consent - "Given the complex network of services which traverse the Subject Lands, blanket reciprocal easements will be established for the Severed Lands and the Retained Lands for the purposes of maintaining all existing access and servicing".

Under the requirements of the Urban Hamilton Official Plan F.1.14.3.5 (c) - "the lots are fully serviced by municipal water and wastewater systems;" and, "The Subject Lands are fully serviced. No changes are being proposed to the existing services. Blanket reciprocal easements are proposed for the Severed Lands and the Retained Lands to maintain all of the existing access and servicing. Any changes to services would be addressed through future master planning, Draft Plan of Subdivision and Site Plan applications."

From a development perspective, the redevelopment of the Stelco lands is a significantly complex undertaking. Planning and Economic Development staff note that the unique and complicated nature of the subject lands will present challenges for any redevelopment to meet the by-law requirements and have expressed concern that not moving ahead with the requested by-law amendments would negatively impact the City's ability to achieve targets set out in the City's 2021-2025 Economic Development Action Plan by delaying or complicating the potential redevelopment of 386 Wilcox Street. These impacted targets include tripling the municipal assessment on the property, along with increasing Hamilton's shovel-ready land supply by 500 acres. An economic study conducted by Ernst & Young Global Limited estimates that the redevelopment of the subject property has the potential to create up to 23,000 new jobs across the Greater Toronto & Hamilton Area and inject up to \$3.8 billion into Ontario's economy. Despite the perception of vacancy in the area, approximately 97% of the overall Bayfront Industrial Area is deemed occupied. Redevelopment of 386 Wilcox Street is projected to create better land use efficiencies, improve access, and bring highly sought-after industrial land supply to the market.

Staff have recommended in this report that the request for by-law amendments be refused. However, within the Alternatives for Consideration section of the report, staff have provided a fulsome alternative for Council's consideration that would direct staff to make the necessary by-law amendments working with Legal Services staff to mitigate the infrastructure management and precedent concerns in the best way possible.

## **ALTERNATIVES FOR CONSIDERATION**

Council could support Slate's request for amendments to the City's Sewers and Drains By-law No.06-026 and the City's Waterworks By-law R84-026, and direct staff to amend the by-laws and to enter into a modified version of the City's standard Joint Use Agreement that addresses the unique considerations of such an agreement for this property.

If the request for by-law amendments is granted by Council, staff recommends that such amendments be on a site-specific and temporary basis for existing services only, in effect only until such time as the required Concept Plan and Master Servicing Strategy are implemented as required by the Holding Provision. The Holding Provision in place on the property through By-law 22-069 is not applicable to the proposed severed lot on 386 Wilcox Street as well as the lands located at 855 and 1155 (MANA South and MANA North) Industrial Drive that are party to the current Joint Use Agreement with the site and would be required to be party to a modified Joint Use Agreement.

An updated Joint Use Agreement pursuant to this alternative for consideration would have to be entered into between the City, Slate, and MANA. While Slate and MANA (and Stelco as long-term tenant of part of Slate's lands) are all sophisticated parties that

should not require the City's assistance to resolve any disputes between them under a modified Joint Use Agreement, there is still a risk that the City may be forced to devote time and resources to such future disputes if they have an impact on City services and connections thereto, or come up in the consideration of future development applications.

Should Council adopt the Alternative for Consideration, Legal Services would assist Public Works staff with drafting the relevant amendments to By-laws R84-026 and 06-026 and drafting and registering on title the required modified Joint Use Agreement to ensure the impact of the shared connection is limited and temporary. The By-law amendments would be prepared for approval at the September 28, 2022 City Council meeting.

In summary, the alternative for Council's consideration would be to direct staff as follows:

That staff be directed to amend the City's Sewers and Drains By-law No.06-026 and the City's Waterworks By-law R84-026 on a site-specific basis for existing services for the lands at 386 Wilcox Street and on a temporary basis until such time as the required Concept Plan and Master Servicing Strategy are implemented as required by the Holding Provision.

## **ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN**

### **Economic Prosperity and Growth**

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

### **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**

Appendix "A" to Report PW22083/LS22033 – Severance Sketch of 386 Wilcox Street

Appendix "B" to Report PW22083/LS22033 – Decisions of the Committee of Adjustment dated November 25, 2021