



**CITY OF HAMILTON**

**PUBLIC WORKS DEPARTMENT**  
**Operations and Waste Management Division**

<b>TO:</b> Chair and Members Public Works Committee	<b>WARD(S) AFFECTED:</b> WARD 4
<b>COMMITTEE DATE:</b> October 15, 2012	
<b>SUBJECT/REPORT NO:</b> Permanent Closure and Sale of a Portion of Public Unassumed Alleyway Abutting 1430 Main Street East, Hamilton (PW12080) - (Ward 4)	
<b>SUBMITTED BY:</b> Gerry Davis, CMA General Manager Public Works Department	<b>PREPARED BY:</b> Marilyn Preston (905) 546-2424, Extension 4298
<b>SIGNATURE:</b>	

**RECOMMENDATION:**

- (a) That a portion of the public unassumed alleyway abutting the south side of 1430 Main Street East, Hamilton, as shown on Appendix A, attached to Report PW12080 (the "Subject Lands"), be permanently closed and transferred to the owner of 1430 Main Street East, Hamilton, subject to the following conditions:
  - (i) That the applicant bring an application to the Ontario Superior Court of Justice, under Section 88 of the Registry Act, R.S.O. 1990, for an order to permanently close and purchase the Subject Lands;
  - (ii) That the General Manager, Public Works or his designate sign the appropriate documentation confirming that no public funds have been expended on the Subject Lands;
  - (iii) That the documentation regarding the application to the Ontario Superior Court of Justice be prepared by the applicant, to the satisfaction of the City Solicitor;
  - (iv) That the applicant register a reference plan pursuant to the Registry Act and that said plan be prepared by an Ontario Land Surveyor to the satisfaction of the Manager, Surveys and Technical Services Section and that the applicant deposit a reproducible copy of said plan with the Manager, Surveys and Technical Services Section;
- (b) That provided the application to the Ontario Superior Court of Justice to permanently close the Subject Lands is approved:

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- (i) That the City Solicitor be authorized and directed to prepare the by-law to permanently close the Subject Lands;
- (ii) That the appropriate by-law be introduced and enacted by Council;
- (iii) That the Economic Development and Real Estate Division of the Planning and Economic Development Department be authorized and directed to sell the closed Subject Lands in accordance with the Procedural By-law for the Sale of Land, By-law No. 04-299 for fair market value;
- (iv) That the City Solicitor be authorized and directed to register a certified copy of the by-law permanently closing the Subject Lands in the proper land registry office, upon confirmation from the Public Works Department that all applicable fees and costs associated with the application have been paid by the applicant;
- (v) That the by-law permanently closing the Subject Lands does not take effect until a certified copy of the by-law is registered in the proper land registry office;
- (vi) That the Public Works Department publish notice of the City's intention to pass the by-law pursuant to City of Hamilton By-law 04-299 being a By-law to Establish Procedures, including the Giving of Notice to the Public, Governing the Sale of Land Owned by the City of Hamilton.

**EXECUTIVE SUMMARY**

The owner of 1430 Main Street East and 6 Crosthwaite Street South submitted an application to permanently close and purchase a portion of public unassumed alleyway to facilitate the redevelopment of the above mentioned properties. Notice of the application was circulated to internal City Divisions, public utilities and owners of properties within a 400' radius of the Subject Lands, as shown on Appendix B, attached to Report PW12080. There were no negative comments received regarding the application from any internal City Division or public utility. There were three negative responses received from owners of properties within the circulation radius and these responses have been reviewed and considered by staff. As the applicant is the owner of all properties abutting the Subject Lands, Operations and Waste Management staff does not oppose the application.

**Alternatives for Consideration - See Page 4**

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS**

**Financial:** The Subject Lands will be transferred to the owner of 1430 Main Street East for fair market value, as determined by the Economic Development and Real Estate Division.

**Staffing:** There are no staffing implications.

**Legal:** The City Solicitor will prepare the by-law to permanently close the Subject Lands and will register this by-law in the Registry Office once Council has

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approved it. The City Solicitor will complete the transfer of the Subject Lands to the owner of 1430 Main Street East and 6 Crosthwaite Avenue South, Hamilton, pursuant to an agreement of purchase and sale or Offer to Purchase as negotiated by the Economic Development and Real Estate Division.

### **HISTORICAL BACKGROUND**

The owner of 1430 Main Street East and 6 Crosthwaite Avenue South, Hamilton, is proposing to redevelop these properties into a six storey mixed use building. The redevelopment will incorporate the Subject Lands situated between the properties. Accordingly, the owner has applied to permanently close and purchase the Subject Lands.

### **POLICY IMPLICATIONS**

A by-law must be passed to permanently close the lands in accordance with the Municipal Act, 2001.

The recently supported Alleyway Management Program endeavours to address citizen inputs, interests and concerns, and also address the benefit to the local community. Staff considers this closure and sale advantageous to the surrounding area in terms of facilitating the redevelopment of the property.

The closure of this alleyway supports the Strategic Plan objectives of enhancing overall sustainability and implementing processes to improve effectiveness and efficiency.

### **RELEVANT CONSULTATION**

Notice of the proposed closure and sale was sent to the owners of the 149 identified properties within a 400' (121.9m) radius of the Subject Lands as shown on Appendix B, attached to Report PW12080. The City received a total of eighteen responses. Fourteen responses supported the application, three responses opposed the application, and one response indicated no comment.

The three opposed responses consisted of the following:

The owner of one property located on Crosthwaite Avenue North, which does not abut the Subject Lands, objected on the basis that the alleyway was used to access a mutual driveway. On further examination, it was determined that the property owner mistakenly believed another alleyway was the subject of the application.

Another owner of two properties on Kenilworth Avenue North, which do not abut the Subject Lands, objected on the basis that the application was not clear on the proposed use of the Subject Lands.

The owner of a property on Main Street East which does not abut the Subject Lands but backs onto a portion of the unassumed alleyway that is to remain open, objected on the

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basis that the closure will remove the ability to bypass the intersection at Main Street East and Kenilworth Avenue South. Vehicular access over unassumed alleyways is not guaranteed and this alleyway should not be used as a means of bypassing controlled traffic intersections.

The following City Departments and Divisions were consulted on this application:

- Planning and Economic Development Department: Development Engineering, Building Services, Economic Development and Real Estate and Planning
- Public Works Department: Environment and Sustainable Infrastructure, Transportation, Energy and Facilities and Operations and Waste Management
- Hamilton Emergency Services
- Corporate Services Department: Budgets and Finance Division

No negative comments were received from any municipal departments.

In addition, the Ward Councillor was consulted and had no objection.

Public utilities including Hydro One, Horizon Utilities, Bell and Union Gas were notified of the application. Union Gas will require an easement upon closure of the Subject Lands. Horizon Utilities has high voltage equipment in close proximity to the Subject Lands. Therefore, the building envelope in the proposed redevelopment must not encroach into the limits of the approach for energized electrical equipment and Horizon Utilities will be included in the building design review stage to mitigate any such issues.

#### **ANALYSIS / RATIONALE FOR RECOMMENDATION**

As there were no unresolvable or compelling objections received from internal City Divisions, public utilities or neighbouring property owners and as the applicant is the owner of all abutting lands on both sides of the subject property, the application to close and transfer the Subject Lands to the owner of 1430 Main Street East, Hamilton is not opposed by staff.

#### **ALTERNATIVES FOR CONSIDERATION**

Alternatively, the application can be denied and the entire alleyway will remain public unassumed. However, the City does not currently maintain this unassumed alleyway and transferring the Subject Lands to private ownership would relieve the City of any potential future maintenance costs. In addition, the City would not receive the revenue from the sale of the Subject Lands at fair market value and the redevelopment of the applicant's properties would be adversely impacted.

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**CORPORATE STRATEGIC PLAN**

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability,  
3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development,  
6. Environmental Stewardship, 7. Healthy Community

***Healthy Community***

- ◆ Plan and manage the built environment

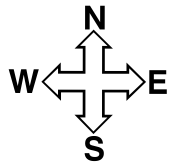
**APPENDICES / SCHEDULES**

Appendix A - Aerial Drawing

Appendix B - Location Plan



PROPOSED CLOSURE OF UNASSUMED ALLEY AT 1430 MAIN STREET EAST



**LOCATION PLAN**

PROPOSED CLOSURE OF  
UNASSUMED ALLEY AT

**1430 MAIN STREET EAST**

CITY OF HAMILTON  
PUBLIC WORKS DEPARTMENT

**LEGEND**



**SUBJECT LANDS**

DATE: January 19, 2012

Not to Scale

REFERENCE FILE NO : PW12\_\_