

**CITY OF HAMILTON**

**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
**Economic Development Division**  
**Growth Management Division**

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| <b>TO:</b> Mayor and Members<br>General Issues Committee  | <b>WARD(S) AFFECTED:</b> WARD 8  |
| <b>COMMITTEE DATE:</b> December 4, 2013   |  |
| <b>SUBJECT/REPORT NO:</b><br>Acquisition of Part of 1400 Upper James, Hamilton, from LPF Realty Retail Inc. (PED13207) (Ward 8) |  |
| <b>SUBMITTED BY:</b><br>Jo-Anne Priel<br>Acting General Manager<br>Planning and Economic Development<br>Department              | <b>PREPARED BY:</b><br>Bill Farkas<br>(905) 546-2424 Ext. 7019<br><br>Tony Sergi<br>(905) 546-2424 Ext. 2274 |
| <b>SIGNATURE:</b>   | Gavin Norman<br>(905) 546-2424 Ext. 1322   |

**RECOMMENDATIONS:**

- (a) That an Option to Purchase with Authority to Enter, executed by LPF Realty Retail Inc. on November 7, 2013, and scheduled to close on February 14, 2014, identified as Part of Lot 15, Concession 8, in the City of Hamilton, comprising an area of 1.95 acres, subject to an easement described as Part 2 on Expropriation Plan WE424570, being part of PIN 16912-0017(LT), forming part of the property municipally known as 1400 Upper James Street, as shown on Appendix "A" and Appendix "B" attached to Report PED13207, be approved and completed at a purchase price of \$717,656.60, subject to adjustments and subject to:
- i) Satisfactory environmental review at the sole and absolute discretion of the City of Hamilton, failing which the Option to Purchase shall be null and void;

**SUBJECT: Acquisition of part of 1400 Upper James, Hamilton, from LPF Realty Retail Inc. (PED13207) (Ward 8) - Page 2 of 7**

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- ii) The owner providing the City of Hamilton with a copy of a Phase 1 environmental report on or before December 13, 2013;
  - iii) The owner obtaining approval of an Official Plan Amendment and Zoning By-law Amendment filed as OPA-12-012 and ZAC-12-029, to permit the expansion of the existing commercial development, which have been appealed to the Ontario Municipal Board for non-decision, failing which the Option to Purchase shall be null and void;
  - iv) The owner obtaining site plan approval and satisfaction of pre-approval conditions, failing which the Option to Purchase shall be null and void;
  - v) The City withdrawing its Planning Application(s) appeal, being OMB Case No. PL130601 with the Ontario Municipal Board, and written confirmation received from the Ontario Municipal Board on or before closing; and
  - vi) The sanitary easement described as Part 2 on Expropriation Plan WE424570 being amended to include additional infrastructure for the installation, maintenance, etc. of storm sewers and water.
- (b) That the purchase price of \$717,656.60, subject to adjustments be funded from Capital Account 5181180090 (Annual Stormwater Management Program);
- (c) That the Mayor and Clerk be authorized and directed to execute any necessary documents, in a form satisfactory to the City Solicitor.

**EXECUTIVE SUMMARY:**

This purchase of the subject land by the City relates to the Mewburn and Sheldon Neighbourhoods Master Servicing Plan that would implement the requirement of a stormwater management (SWM) pond within the Mewburn Neighbourhood to support planned growth in the area. The requirement for this acquisition had been supported through three engineering studies undertaken; Mewburn and Sheldon Neighbourhoods Master Servicing Plan, Class EA 2004, City of Hamilton Stormwater Master Plan, Class EA (City-Wide) 2007, and West Central Drainage Assessment 2011. Funding for the acquisition has also been identified within the City of Hamilton 2011 Development Charge Background Study.

The approval of staff recommendations would also resolve the City's Ontario Municipal Board (OMB) appeal of the severance approval granted to the Owner by the Committee of Adjustment as well as finalizing all outstanding matters that resulted from the expropriation by the City of an easement over the subject lands for the purpose of installing sanitary and storm sewers.

***Alternatives for Consideration – See Page 6.***

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS:**

**Financial:** This project is contained in the 2011 City of Hamilton Development Charges Background Study as Stormwater Pond #24. The amount funded conforms to the Local Servicing and Financial Policies as approved by City Council.

**Staffing:** There is no staffing implication arising from this recommendation.

**Legal:** Legal Services has been involved in the review and approval of the Option to Purchase and Authority to Enter documents.

The purchase of the subject lands will also finalize all outstanding matters that resulted from the expropriation by the City of an easement over Part of 1420 Upper James Street, Hamilton, from RENCOAST HOLDINGS INC., over part of Lot 15, Concession 8, Township of Barton, designated as Part 3 on Plan 62R-15255 for the purposes of installing sanitary and storm sewers.

**HISTORICAL BACKGROUND:**

In December 2004, the Mewburn and Sheldon Neighbourhoods Master Servicing Plan, Class EA Study, was completed. The study examined both sanitary servicing and stormwater management (SWM) issues in these two neighbourhoods. With respect to SWM, the study concluded that a new centralized SWM quantity pond was required in the Mewburn Neighbourhood, as well as the expansion of an existing pond in the Sheldon Neighbourhood to address planned future growth in the neighbourhood. The subject lands are within the Mewburn Neighbourhood. The Class EA Study did not address the land implications of SWM in the Mewburn Neighbourhood in that the approved Neighbourhood Plan designates the lands as "Single and Double" Residential and identified a road pattern to accommodate planned residential development. Implementation of the SWM pond necessitates changes to the land use designations within the Mewburn Neighbourhood. These land use changes are being assessed as part of the review of the development applications.

The study recommendations also included additional routing requirements for storm and sanitary sewers in addition to the centralized SWM facility within the Mewburn Neighbourhood.

Subsequently, through the City-wide Storm Drainage Master Plan (2007), computer modelling of the existing storm sewer system identified significant issues with respect to the hydraulic capacity of the storm trunk system on the mountain which prompted the City to undertake a more detailed study of the West Central Mountain area to confirm

stormwater infrastructure needs and any enhancements that might be required to address downstream constraints. The West Central Mountain Drainage Assessment was completed in October 2011 and confirmed the need for the Mewburn pond and that it be sized such that flows from it would not exceed the capacity of the downstream storm sewer. Recommendations included that it be sized to provide water quality treatment in addition to quantity control.

The Mewburn pond, approximately 1 ha in size, is proposed to be located on lands currently owned by three different land owners at the back of 1400 Upper James Street (White Rose Plaza), each which are subject to current development applications with the City:

- 1400 Upper James Street (zoning);
- 1125 West 5th Street (draft plan of subdivision and zoning);
- 1041 West 5th Street (zoning).

Another property in the neighbourhood, 1155 West 5th Street, received draft plan of subdivision approval and change in zoning from Council in the spring 2013, but the plan was appealed to the board by the owner of 1125 West 5th Street citing the need for comprehensive planning in the neighbourhood.

The Official Plan Amendment and Zoning application at 1400 Upper James Street (pending) is to allow for the extension of an existing parking lot behind the plaza and to zone the excess land for the future SWM pond. The owner's intent is to affect the sale of the remnant parcel to either the City or the abutting owner at 1125 West 5th Street. To achieve this the owner also applied for a severance which received approval at the Committee of Adjustment in the summer of 2013, but was appealed to the OMB by the City when the Committee removed requested conditions of approval that required the owner to provide servicing easements in favour of the City to allow for orderly development. Planning staff and Growth Management staff requested the Committee of Adjustment to table consideration of the Consent Application until such time as the land use and servicing matters could be resolved. However, the Committee of Adjustment approved the application on the basis that the application was a lot-line adjustment. As such, Planning and Growth Management staff appealed the decision and staff's decision was ratified by Council to proceed with the appeal.

As the applications for an official plan amendment and zoning by-law amendment have been appealed to the OMB for non-decision, it is anticipated that minutes of settlement will be negotiated with the applicant and that this will be subsequently presented to Planning Committee and Council for approval.

Subsequent discussions between the owner and the City have taken place with an aim to settle the matter without going to a hearing, the result of which is staff's

recommendation to acquire the remnant parcel for the purposes of a stormwater management pond.

**POLICY IMPLICATIONS/LEGISLATED REQUIREMENTS:**

The recommendation is consistent with the Real Estate Management Portfolio Strategy Plan, as approved by Council on November 24, 2004, to acquire property in support of municipal program needs. As the purchase price of the subject lands exceeds the \$250,000 limit set by Council under the Delegation of Authority approval process, approval is, therefore, required by City Council.

City of Hamilton 2011 Development Charge Background Study for Water, Wastewater, Stormwater and Go Transit, Appendix C-Local Service Policy for Water, Wastewater and Stormwater Services.

The purchase price of the subject lands complies with the residential land costs which have been set at \$360,000/acre for Stormwater Management Facilities.

**RELEVANT CONSULTATION:**

- City Manager's Office – Legal Services
- Corporate Services Department – Financial Planning and Policy Division
- Ward Councillor

**ANALYSIS / RATIONALE FOR RECOMMENDATION:**

The City has undertaken three engineering studies related to stormwater:

- Mewburn and Sheldon Neighbourhoods Master Servicing Plan, Class EA 2004;
- City of Hamilton Stormwater Master Plan, Class EA (City-Wide) 2007;
- West Central Mountain Drainage Assessment 2011.

The studies confirm the need for an SWM pond in the Mewburn Neighbourhood required to support planned growth in the area. The owner of 1400 Upper James Street (White Rose Plaza) would like to expand its parking lot (subject to a current zoning application) and sell off the remnant portion of the property which is needed for the pond to a willing buyer. In that respect, the owner approached the City and the City has determined that acquiring the property for this purpose would be beneficial to allow orderly development of the neighbourhood as it would provide for the ultimate stormwater outlet. It would also allow the City to expedite the resolution of its OMB appeal of the severance approval granted to 1400 Upper James Street by the Committee of Adjustment.

The purchase of the parcel would be funded through development charges.

**ALTERNATIVES FOR CONSIDERATION:**

The only other consideration would be for the City to not purchase the subject lands. If the City did not purchase the subject lands then presumably the parcel would be sold to another abutting land owner; however, in the interim the City would have to complete the OMB appeal process to acquire necessary servicing easements across the parcel to allow for orderly development. Regardless of the outcome, the time and effort required for the board process is onerous and costly making it preferable to settle the matter in advance of the board hearing.

If the servicing easements could be secured through the OMB appeal process then selling the parcel to an abutting owner would, in effect, ultimately achieve the same goal. That is, a pond would be constructed which would be paid for by the City by way of development charges including purchase of the land; however, staff are of the opinion that its purchase in advance of development would be more desirable as it would allow the appeal to be resolved quicker at less cost and will allow for orderly development.

**ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN:**

**Strategic Priority #1**

A Prosperous & Healthy Community

*WE enhance our image, economy and well-being by demonstrating that Hamilton is a great place to live, work, play and learn.*

**Strategic Objective**

- 1.2 Continue to prioritize capital infrastructure projects to support managed growth and optimize community benefit.
- 1.5 Support the development and implementation of neighbourhood and City wide strategies that will improve the health and well-being of residents.
- 1.6 Enhance Overall Sustainability (financial, economic, social and environmental).

**Strategic Priority #2**

Valued & Sustainable Services

*WE deliver high quality services that meet citizen needs and expectations, in a cost effective and responsible manner.*

**Strategic Objective**

- 2.1 Implement processes to improve services, leverage technology and validate cost effectiveness and efficiencies across the Corporation.

**Strategic Priority #3**

Leadership & Governance

*WE work together to ensure we are a government that is respectful towards each other and that the community has confidence and trust in.*

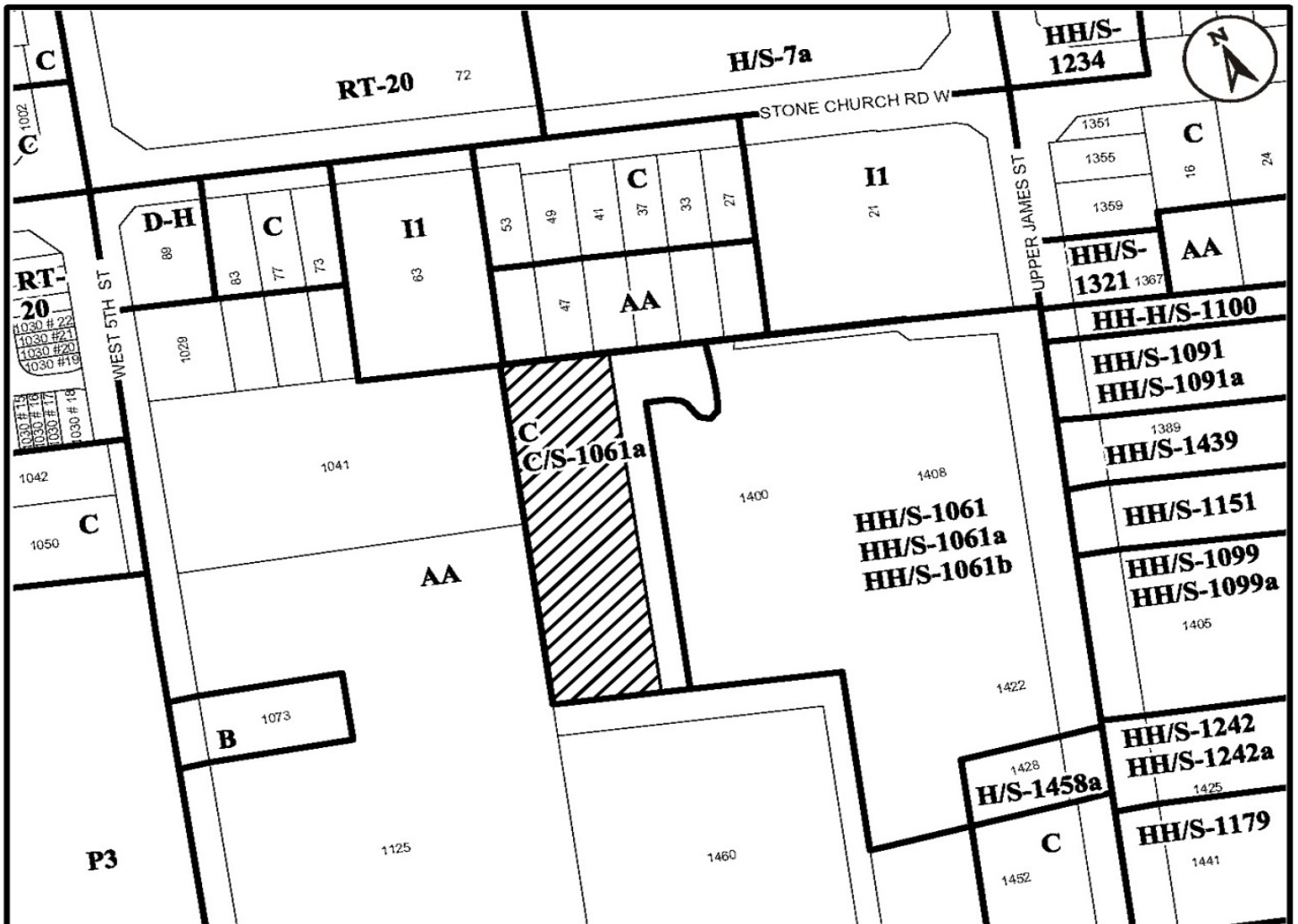
**Strategic Objective**

- 3.1 Engage in a range of inter-governmental relations (IGR) work that will advance partnerships and projects that benefit the City of Hamilton.
- 3.4 Enhance opportunities for administrative and operational efficiencies.

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| <b>APPENDICES / SCHEDULES</b> |
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Appendix "A" to Report PED13207 - Location Map  
Appendix "B" to Report PED13207 - Plan RC-H-798

BF/TS/GN:sd



● Subject Property

## Location Map



Hamilton

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

File Name/Number:  
2013-099

Date:  
Nov. 11, 2013

Appendix "A"

Scale:  
N.T.S.

Planner/Technician:  
BF/DB

### Subject Property



Portion of 1400 Upper James Street



Ward 8 Key Map

N.T.S.



