



CITY OF HAMILTON

PUBLIC WORKS DEPARTMENT
Corporate Assets and Strategic Planning Division

TO: Chair and Members Public Works Committee	WARD(S) AFFECTED: WARD 9
COMMITTEE DATE: June 3, 2013	
SUBJECT/REPORT NO: Permanent Closure and Sale of a Portion of the Road Allowance of Kingsview Drive, Stoney Creek (PW04058(a)) - (Ward 9)	
SUBMITTED BY: Gerry Davis, CMA General Manager Public Works Department	PREPARED BY: Marilyn Preston, Road Programming Technician (905) 546-2424 Extension 4298
SIGNATURE:	

RECOMMENDATION

That the following recommendations be approved, as required, to give effect to direction from Council at its meeting on May 12, 2004, in approving Item 8 of the Public Works, Infrastructure and Environment Committee Report 04-011 with respect to the application to permanently close and sell a portion of the road allowance of Kingsview Drive, Stoney Creek, abutting 2 Tamarack Place, as shown on Appendix A, attached to Report PW04058(a) (the "Subject Lands"), subject to the following conditions:

- (a) That the City Solicitor be authorized and directed to prepare a by-law to permanently close the Subject Lands as a public highway;
- (b) That the appropriate by-law be introduced and enacted by Council;
- (c) That the Economic Development and Real Estate Division of the Planning and Economic Development Department be authorized and directed to sell the Subject Lands to the applicant in accordance with the Procedural By-law for the Sale of Land, By-law No. 04-299 at fair market value;
- (d) That the City Solicitor be authorized and directed to register a certified copy of the by-law permanently closing the highway 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;

**SUBJECT: Permanent Closure and Sale of a Portion of the Road Allowance of
Kingsview Drive Road Allowance, Stoney Creek
(PW04058(a)) - (Ward 9) Page 2 of 5**

- (e) That the by-law permanently closing the highway does not take effect until a certified copy of the by-law is registered in the proper land registry office;
- (f) That the applicant deposits a reference plan under the Registry Act and that said plan be prepared by an Ontario Land Surveyor to the satisfaction of the Manager, Geomatics and Corridor Management Section and that the applicant deposit a reproducible copy of said plan with the Manager, Geomatics and Corridor Management Section.
- (g) That the appropriate easements required by Union Gas and Hamilton Water be obtained by the applicant at the applicant's expense.
- (h) That the Public Works Department publish a 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

In 2004 staff brought forward Report PW04058 recommending that Council deny an application received from the owner of 2 Tamarack Place, Stoney Creek, to purchase a portion of the abutting road allowance of Kingsview Drive to provide the required setbacks for the installation of a swimming pool. The Public Works, Infrastructure and Environment Committee considered the following staff recommendation:

“That the application to stop up, close and sell a portion of the Kingsview Drive road allowance, abutting 2 Tamarack Place, in the former City of Stoney Creek, now in the City of Hamilton, be denied.”

Following consideration of Report PW04058, Committee ultimately defeated the staff recommendation and, on a motion, Committee approved the application, as follows.

“That the application to stop up, close and sell a portion of the Kingsview Drive road allowance, abutting 2 Tamarack Place, in the former City of Stoney Creek, now in the City of Hamilton be approved subject to the appropriate easements being provided over the subject lands and that all costs associated with the closure be the responsibility of the applicant.”

The applicant is now prepared to move forward with completing the purchase but, as a result of the motion passed by Council on May 12, 2004, it was determined that the required conditions of the permanent closure and sale of a municipal road allowance were not properly authorized and, as such, necessary approval needs to be given in order to give effect to this Council direction. Accordingly, staff have prepared a housekeeping report to ensure that the necessary approvals are provided to allow staff to proceed to complete the work required to permanently close and sell this portion of road allowance.

Alternatives for Consideration - See Page 4

FINANCIAL / STAFFING / LEGAL IMPLICATIONS

Financial: The Subject Lands will be transferred to the owner of 2 Tamarack Place at fair market value, as determined by the Economic Development and Real Estate Division.

Staffing: An agreement to purchase the Subject Lands will be negotiated by the Economic Development and Real Estate Division. No additional staff are required in executing the recommendations.

Legal: The City Solicitor will prepare the by-law to permanently close the Subject Lands as a public highway and will register this by-law in the Registry Office once Council has approved it. The City Solicitor will complete the transfer of the Subject Lands to the owner of 2 Tamarack Place pursuant to an agreement of purchase and sale or Offer to Purchase as negotiated by the Economic Development and Real Estate Division.

HISTORICAL BACKGROUND

In 2004 a report recommending the denial of a request to permanently close and sell a portion of the road allowance of Kingsview Drive, abutting 2 Tamarack Place in Stoney Creek was presented to the Public Works, Infrastructure and Environment Committee. The staff recommendation to deny the application was defeated by the Committee and the request to close and purchase the lands was approved by motion passed by Council. In the fall of 2012 the applicant realized that he had not performed the required actions to complete the transaction and contacted the City's Real Estate Division to finalize the sale. As the original recommendation was to deny the request, the conditions of closure and sale were not included in the original report. In order to now give effect to the motion passed by Council, it is necessary to obtain Council authorization for the recommendations in Report PW04058(a) setting out the conditions of the permanent closure and sale of the Subject Lands in order to fulfil legislative requirements.

POLICY IMPLICATIONS/LEGISLATED REQUIREMENTS

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

RELEVANT CONSULTATION

As part of the original application, appropriate City staff, public utilities and property owners within a 400' (121.9m) radius of the Subject Lands were notified of the proposed permanent closure and sale. The 2004 Ward Councillor at the time was notified of the

SUBJECT: Permanent Closure and Sale of a Portion of the Road Allowance of Kingsview Drive Road Allowance, Stoney Creek (PW04058(a)) - (Ward 9) Page 4 of 5

proposal and the current Ward Councillor has been advised of the current status of the application. In 2004 comments were reviewed and considered as part of the application process and presented to the Public Works, Infrastructure and Environment Committee on May 3, 2004 in Report PW04058. The comments from neighbouring property owners did not present compelling reasons for the application to be denied.

Staff recommended denial of the application on the basis of comments received from Union Gas, which indicated it has an existing gas main within the closure area and will require easement protection. In addition, Hamilton Water has an existing watermain and hydrant within the Subject Lands and will also require an easement. These easement requirements will be preserved as a condition in the permanent closure and sale process.

ANALYSIS / RATIONALE FOR RECOMMENDATION

The application of the owner of 2 Tamarack Place, Stoney Creek, to permanently close and purchase the lands was previously approved by Council in passing Item 8 of the Public Works, Infrastructure and Environment Committee Report 04-011. Staff have identified that in defeating the staff recommendation to deny the application and by passing a motion to approve the application, approval for the required conditions to complete the permanent closure and sale of a municipal road allowance are outstanding. As a result, Staff are unable to proceed with the permanent closure and sale without obtaining approval of the recommendations set out in Report PW04058(a).

ALTERNATIVES FOR CONSIDERATION

The City could retain the road allowance. As this was a decision of a previous Council, a simple majority would reverse the decision. However, in 2004 Council approved the permanent closure and sale of the lands and the owner has already constructed the swimming pool based on the approval provided. As the issues which originally caused staff to recommend denying the application can be resolved through retaining easements as a condition of the sale, staff do not support the alternative of not closing and selling a portion of Kingsview Drive allowance to the applicant.

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

1.6 Enhance Overall Sustainability (financial, economic, social and environmental).

**SUBJECT: Permanent Closure and Sale of a Portion of the Road Allowance of
Kingsview Drive Road Allowance, Stoney Creek
(PW04058(a)) - (Ward 9) Page 5 of 5**

APPENDICES / SCHEDULES

Appendix A - Aerial Drawing

