

CITY OF HAMILTON

PUBLIC WORKS DEPARTMENT
Corporate Assets and Strategic Planning Division

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| TO: Chair and Members Public Works Committee | WARD(S) AFFECTED: WARD 12 |
| COMMITTEE DATE: June 17, 2013 | |
| SUBJECT/REPORT NO: Proposed Permanent Closure and Sale of the Road Allowance of Hazelwood Avenue, Ancaster (PW13045) - (Ward 12) | |
| SUBMITTED BY: Gerry Davis, CMA General Manager Public Works Department | PREPARED BY: Marilyn Preston Road Programming Technician (905) 546-2424, Extension 4298 |
| SIGNATURE: | |

RECOMMENDATION

- (a) That the application to permanently close and purchase the unopened road allowance known Hazelwood Avenue, Ancaster, as shown on Appendix A, attached to Report PW13045 (the "Subject Lands"), be approved, subject to the following conditions:
- (i) That the applicant makes 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 to be permanently closed;
 - (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 under the Registry Act showing the required portions of the Subject Lands to be transferred 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

**SUBJECT: Proposed Permanent Closure and Sale of the Road Allowance of
Hazelwood Avenue, Ancaster (PW13045) - (Ward 12) - Page 2 of 6**

applicant deposit a reproducible copy of said plan with the Manager, Geomatics and Corridor Management Section;

- (b) That provided the application to the Ontario Superior Court of Justice to permanently close the Subject Lands is approved:
- (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 a portion of the Subject Lands to the applicant and a portion of the Subject Lands to the owner of 1269 Mohawk Road West in accordance with the Procedural By-law for the Sale of Land, By-law No. 04-299 at fair market value;
 - (iv) That the appropriate right-of-way agreement over the Subject Lands be given in perpetuity to the owner of 1263 Mohawk Road West for the purposes of vehicular access to Mohawk Road West prior to the transfer of the Subject Lands to the applicant, with all associated costs to be paid by the applicant;
 - (v) That a sufficient portion of the Subject Lands be transferred to the owner of 1269 Mohawk Road West, to eliminate the encroachment and satisfy the side-yard setback requirements for the appropriate zoning designation, with all associated costs to be paid by the applicant;
 - (vi) 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;
 - (vii) 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;
 - (viii) That the Public Works Department publish a notice pursuant 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.

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| EXECUTIVE SUMMARY |
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An application has been received from the owner of 1261 Mohawk Road West, Ancaster, to permanently close and purchase the Subject Lands. It is proposed that the Subject Lands will be used to create a private condominium road to facilitate the development of four new residential lots. For further clarification please refer to Appendix A and B.

The Subject Lands provide the sole means of functional vehicular access to and from the property at 1263 Mohawk Road West. The property at 1263 Mohawk Road West does not have direct frontage on the Subject Lands and the owner of this property enjoys a right-of-way over the applicant's property to the Subject Lands, then utilizes the Subject Lands for access to Mohawk Road West. Staff notified the registered owner of the application and subsequently spoke to the registered owner to discuss the application. The owners of 1263 Mohawk Road West are aware of the application to close and purchase the Subject Lands but support the approval of the application, provided that it is approved with the condition that permanent physical and legal access over the Subject Lands be maintained by way of an easement registered on title. Furthermore, the property owner has been in regular communication with the applicant and understands the applicant intends to create a private condominium road which will be maintained. Currently, the City does not provide any maintenance on the Subject Lands.

In addition, the house situated on 1269 Mohawk Road West encroaches onto the Subject Lands and, according to the earliest located evidence, has done so since prior to 1913. Staff notified the registered owner of the application by mail and by hand delivering a letter and was subsequently contacted by the registered owner through a friend to discuss the application. The friend has confirmed the property owner of 1269 Mohawk Road West also supports the application. Accordingly, staff are recommending as a condition of approval, that the applicant bear all associated costs necessary to transfer a portion of the Subject Lands to the owner of 1269 Mohawk Road West to eliminate the encroachment and satisfy the applicable side-yard setbacks.

Another property owner abutting the Subject Lands on the north-east side expressed an interest in purchasing a portion of the Subject Lands. Staff reviewed these comments and determined that approving the request would not be practical. Therefore, staff recommend that the application be approved for the permanent closure and sale of the road allowance to the owner of 1261 Mohawk Road, Ancaster, as submitted, subject to the conditions in Report PW13045.

Alternatives for Consideration - See Page 6

FINANCIAL / STAFFING / LEGAL IMPLICATIONS

Financial: The Subject Lands will be sold to the owners of 1261 Mohawk Road West and 1269 Mohawk Road West, Ancaster at fair market value, as determined by the Economic Development and Real Estate Division.

Staffing: None

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 approved it. The City Solicitor will prepare a right-of-way agreement and ensure registration of same prior to the transfer of a portion of the Subject Lands to the applicant. The City Solicitor will complete the transfer of the

portion of the Subject Lands to the owner of 1261 Mohawk Road West and a portion of the Subject Lands to the owner of 1269 Mohawk Road West pursuant to an agreement of purchase and sale or Offer to Purchase as negotiated by the Economic Development and Real Estate Division.

HISTORICAL BACKGROUND

Hazelwood Avenue is an unopened road allowance north of Mohawk Road West, as laid out on Registered Plan of Subdivision 595. The owner of 1261 Mohawk Road West has submitted an application to subdivide the property to develop four lots for single family dwellings. Planning staff recommended that the applicant submit an application to permanently close and purchase the abutting Subject Lands to be used as a private condominium road to facilitate the proposed development. Staff identified certain issues regarding ingress and egress for 1263 Mohawk Road West and an encroachment from 1269 Mohawk Road West. Staff have included conditions reviewed by Legal Services to ensure that these issues are resolved prior to completing the closure and sale

POLICY IMPLICATIONS/LEGISLATED REQUIREMENTS

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

RELEVANT CONSULTATION

As part of the procedure to permanently close a road allowance, a notice of any proposed road closure was sent to the registered owners of all properties within a 400 foot (121.9 metre) distance of the Subject Lands, as shown on Appendix B, attached to Report PW13045. There were a total of 39 notices sent. Only two responses were received, both of which were in opposition to the application.

The owner of one property which does not abut the Subject Lands is opposed because they “strongly object to this “philosophy” of crowding houses on 36 foot frontages especially in this area of large, single dwellings”.

The owner of another property, which partially abuts the north-east end of the Subject Lands, is opposed to the proposal but expressed an interest in purchasing a portion of the Subject Lands. However, Staff reviewed this request and have determined that selling any portion of the Subject Lands to that abutting owner would create irregular parcels and would not allow the Subject Lands to facilitate the development proposed by the applicant.

The following internal City Divisions were consulted on this application:

- Planning and Economic Development Department: Development Engineering, Building Services, Economic Development and Real Estate and Planning

**SUBJECT: Proposed Permanent Closure and Sale of the Road Allowance of
Hazelwood Avenue, Ancaster (PW13045) - (Ward 12) - Page 5 of 6**

- Public Works Department: Corporate Assets and Strategic Planning, Transit and Environmental Services
- Hamilton Emergency Services
- Corporate Services Department: Budgets and Finance Division
- City Manager's Office: Legal Services Division
- Ward Councillor

The Engineering Services Division of Public Works identified that the house at 1269 Mohawk Road West encroaches into the Subject Lands. This encroachment should be resolved such that the dwelling is contained entirely within its own property limits. This can be resolved by the City transferring a portion of the Subject Lands from the Hazelwood road allowance to the owner of 1269 Mohawk Road West prior to divesting itself of the Subject Lands. Legal Services has reviewed the recommendations to ensure that the issue of the encroachment will be addressed.

Furthermore, Strategic Planning staff identified that the property at 1263 Mohawk Road West uses the Subject Lands for access to and from Mohawk Road West, and that it does not directly front on Mohawk Road West. It has rear frontage on Honeysuckle but it cannot serve as functional access due to the physical topography as the difference in elevation would not permit vehicular access. The owner of 1263 Mohawk Road West neglected to respond to the notification so Staff contacted the owner. The owner of 1263 Mohawk Road West is aware of the application to close and purchase the Subject Lands and support the approval of the application as submitted, provided that it is approved with a condition that permanent physical and legal access over the Subject Lands be maintained by way of an easement registered on title. The owner of 1263 Mohawk Road West does not abut the Subject Lands and rather enjoys a right-of-way in perpetuity over the applicant's property to access the Subject Lands, which in turn provide the access to and from Mohawk Road West. Furthermore, the property owner has been in regular communication with the applicant and understands the applicant intends to create a private condominium road which will be maintained. Currently, the City does not provide any maintenance or services on or over the Subject Lands, so the owner views this proposed arrangement as a benefit. Legal Services has reviewed the recommendations to ensure that the access for the owner of 1263 Mohawk Road West will be preserved in perpetuity prior to the transfer of the portion of the Subject Lands to the applicant.

Public Utilities including Bell, Hydro One, Horizon Utilities and Union Gas were notified of the proposed closure and sale and no objections were received. Hydro One was notified of the proposed closure and sale as the owner of property within a 400 foot (121.9 metre) radius of the Subject Lands and did not object to the closure.

ANALYSIS / RATIONALE FOR RECOMMENDATION

As the Subject Lands are surplus to the City's needs and as the purchase of the Subject Lands will facilitate the development of four residential lots, Corporate Assets and Strategic Planning staff does not oppose the permanent closure and sale of the Subject Lands.

ALTERNATIVES FOR CONSIDERATION

An alternative to the recommended permanent closure and sale is that the Subject Lands could remain open. However, leaving the Subject Lands as an unopened road allowance would hinder the development of the abutting lands into four residential lots and the City would not receive the revenue from selling the Subject Lands at fair market value. Accordingly, staff do not recommend this alternative.

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).

APPENDICES / SCHEDULES

Appendix A - Aerial Drawing

Appendix B - Location Plan

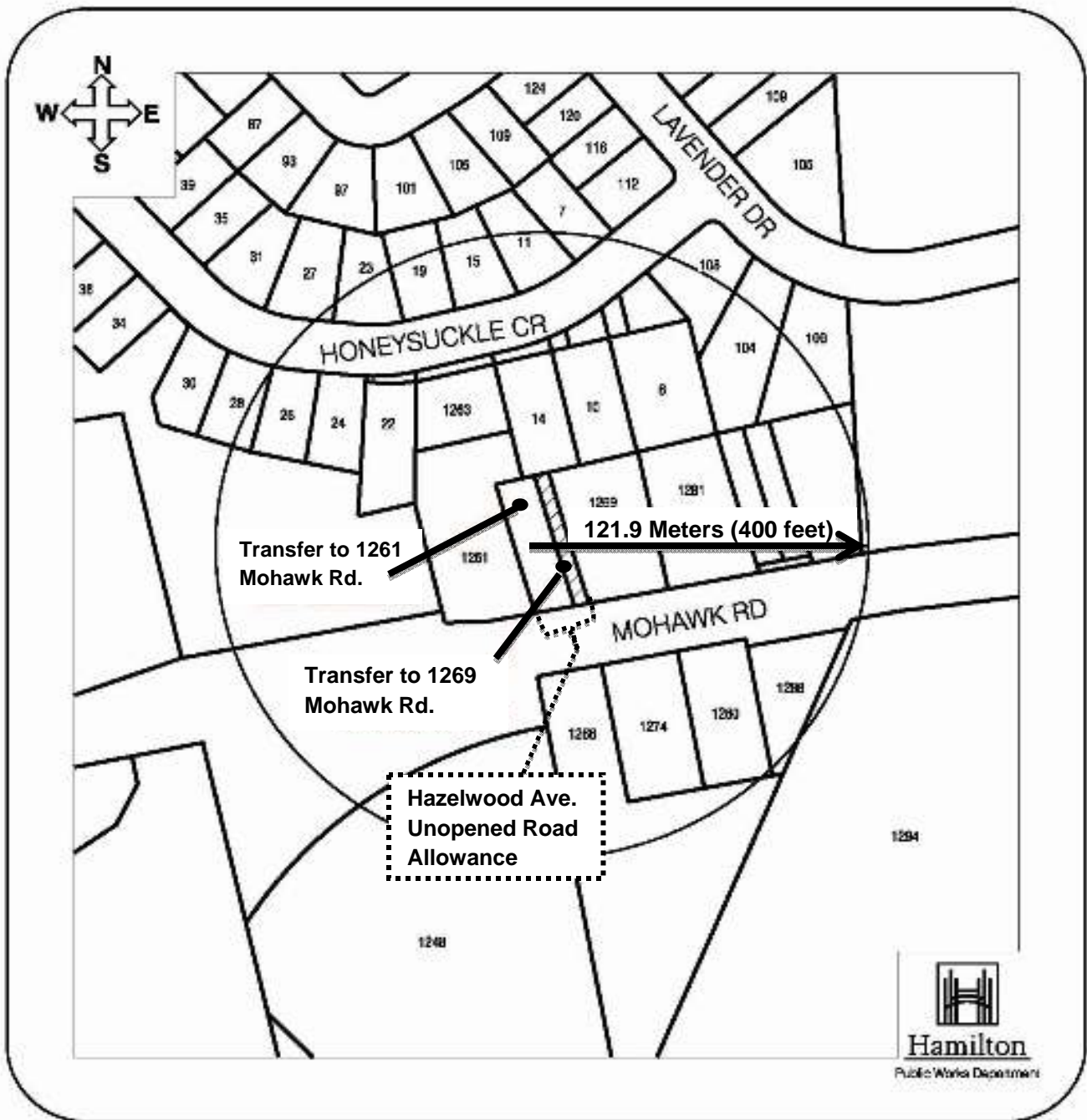


Hamilton

PROPOSED CLOSURE OF
HAZELWOOD AVENUE

Survey & Technical Services
Public Works Department

NTB
02-15-2012
Sketch By: N/M



LOCATION PLAN

PROPOSED CLOSURE OF
HAZELWOOD AVENUE

CITY OF HAMILTON
PUBLIC WORKS DEPARTMENT

LEGEND



SUBJECT LANDS

DATE: February 16, 2012

Not to Scale

REFERENCE FILE NO : PW10_