

**CITY OF HAMILTON**

**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
*Building Services Division*

<b>TO:</b> Chair and Members Planning Committee	<b>WARD(S) AFFECTED:</b> WARD 3
<b>COMMITTEE DATE:</b> March 21, 2011	
<b>SUBJECT/REPORT NO:</b> Demolition Permit – 78 Birge Street (PED09094(a))	
<b>SUBMITTED BY:</b> Tim McCabe General Manager Planning and Economic Development Department	<b>PREPARED BY:</b> Frank Peter 905 546 2424 ext. 2781
<b>SIGNATURE:</b>	

**RECOMMENDATION**

That the Director of Building Services be authorized and directed to issue a demolition permit for 78 Birge Street in accordance with By-Law 09-208 pursuant to Section 33 of The Planning Act, as amended, subject to the following conditions:

- (a) That the applicant has applied for and received a building permit for a replacement building on this property;
- (b) That the said building permit specifies that the replacement building be erected within two years of the demolition of the existing building on this property;
- (c) That the said building permit for the replacement building specifies if such replacement building is not erected within the said two year time limit, that the City be paid the sum of \$20,000;
- (d) That the applicant be required to register on title to the subject property (prior to issuance of the said demolition permit), notice of these conditions (including the directions to the City Clerk outlined in sub-section (e)) in a form satisfactory to the Director of Building Services and to the City Solicitor; and

- (e) That if the said replacement building is not erected as required, the City Clerk be authorized to add the said sum, until payment thereof, as a lien or charge upon the property until paid.

#### **EXECUTIVE SUMMARY**

A demolition permit application request for this property was previously approved by City Council on April 15, 2009, with the standard conditions that require a new building permit to be issued in conjunction with the demolition permit and that the new dwelling be substantially completed within 2 years of the date of the demolition or \$20,000 shall be added to the tax rolls.

Since Council approval, the property was sold to Orev Investments Limited. The applicant, a representative of Orev, is seeking approval to demolish this dwelling without the rebuild conditions being imposed. He addressed this Committee at the December 7, 2010 Planning Committee meeting in the hopes of having the conditions removed. Committee referred the matter back to staff directing that a report be written on the request and brought back at a future Committee meeting. The Committee also directed that the Ward Councillor be consulted. Councillor Morelli was consulted on the matters at a meeting on February 10, 2011.

Under Section 4 of the Demolition Control By-Law 09-208 the Chief Building Official has the delegated authority to issue a demolition permit for residential properties that are considered to be “routine applications”. This application has been deemed a “routine application” as this property is located in the middle of an established neighbourhood and current zoning would permit the replacement residential use. Therefore, the standard conditions required to be registered on title that would require a building permit to be issued in conjunction with the demolition permit and the replacement building to be substantially completed within two years of the date of the demolition would apply in accordance with the By-Law.

However, where the owner of the property does not agree with the conditions being imposed, Section 7 of the By-Law requires the Chief Building Official to advise Council. Council then retains all power to: issue, including imposing the standard rebuild condition; issue without conditions or refuse to issue the demolition permit.

This Report is presented to Council as the owners are not in agreement with the recommended conditions as set out in the Demolition Control By-Law.

***Alternatives for Consideration – See Page 5***

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS** (for Recommendation(s) only)

**Financial:** Not applicable

**Staffing:** Not applicable

**Legal:** Not applicable

**HISTORICAL BACKGROUND** (Chronology of events)

**PRESENT ZONING:** D

**PRESENT USE:** Single Family Dwelling

**PROPOSED USE:** Vacant Land

**BRIEF DESCRIPTION:** A recent inspection revealed that the single family dwelling is deteriorated however, structurally sound and not unsafe. However, the dwelling is in poor condition.

This property is in the Landsdale Neighbourhood and is located in Ward 3. Please see attached location map shown as Appendix A to Report PED09094(a).

No interest to the Hamilton Municipal Heritage Committee.

Lot size: 8.38 m x 32.46 m.

The owner of the property, as per demolition permit application is:

Orev Investments Limited  
971 Highway 6 North  
Hamilton, ON L8N 2Z7

**POLICY IMPLICATIONS**

Not applicable

**RELEVANT CONSULTATION**

Not applicable

**ANALYSIS / RATIONALE FOR RECOMMENDATION**

(include Performance Measurement/Benchmarking Data, if applicable)

The owner of this property, Orev Industries, also owns the adjoining property at 80 Birge Street, the property that abuts the rear of this land known as 338 Victoria Avenue North and the property known as 332 Victoria Avenue North. In addition, the applicant is also a representative of the owner, 992517 Ontario Limited, who owns the properties known as 328 and 336 Victoria Avenue North. The former semi-detached two family dwelling at 336-338 Victoria Avenue North was demolished under a permit in 2008. The re-build conditions were not imposed as the demolition occurred prior to the Comprehensive Demolition Control By-law being enacted. Altogether, the two companies own the four properties that front on Victoria Avenue North and abut 78 and 80 Birge Street. It should also be noted that the properties to the east on Birge Street and the properties to the west, fronting on Victoria Avenue North, are residential dwellings.

Subsequent to his attendance at the December 7, 2010 Planning Committee meeting, the applicant provided additional information regarding potential uses of the property as detailed in Attachment B to Report PED09094(a). The information provided included many different options and lists various permitted uses that are specified in Hamilton Zoning By-law 6593. However, no specific intent was stated. The applicant did indicate that through land assembly over time, more properties will be acquired as they become available and once a critical mass has been obtained, it is possible that a successful zoning change may permit commercial development that could be complementary to the existing Hamilton General Hospital.

One of the uses permitted in the current Hamilton Zoning By-law 6593 is parking spaces for ambulances, and of motor vehicles of physicians, surgeons, patients and visitors of the public hospital, and of employees working at the public hospital, provided the lands are adjacent to or on the opposite side of a highway from a public hospital. This use requires a Site Plan Approval from Development Planning and a municipal license from the Municipal Law Enforcement Section. The current properties fronting on Victoria Avenue mentioned above, including where the dwelling was demolished in 2008, are currently being used as a public parking lot. It may be possible to expand the parking lot onto this lot upon the demolition and upon a land merger or upon a consolidated lot development. As of the date that this report was written the owners of the adjacent parking lot have not applied for or obtained the required Site Plan Approval or municipal license.

In that the applicant has not indicated a specific intended use of the property upon the demolition and given the fact that the required Site Plan Approval and municipal license have not been applied for or obtained for the existing parking lot abutting this property, this Division is recommending that the re-build conditions be imposed. Should the Committee wish to do so, permitting the demolition without the conditions could allow for a further expansion of the parking lot as previously described.

**ALTERNATIVES FOR CONSIDERATION**

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

Should the Committee wish to approve the demolition without imposing the conditions for a replacement dwelling, then the following recommendation may be appropriate:

That the Director of Building Services be authorized and directed to issue a demolition permit for 78 Birge Street in accordance with By-Law 09-208 pursuant to Section 33 of The Planning Act as amended.

**CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)**

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

***Growing Our Economy***

- ◆ Investment in Hamilton is enhanced and supported.
- ◆ Redevelopment of this property with the construction of a new single family dwelling will enhance the neighbourhood, provide additional taxes and curb urban sprawl.

***Environmental Stewardship***

- ◆ Redevelopment within established neighbourhoods uses existing infrastructure and provides an opportunity to use green products and technologies.

***Healthy Community***

- ◆ Plan and manage the built environment.
- ◆ Replacing an older dwelling with new construction will enhance and add to the stability of the neighbourhood.

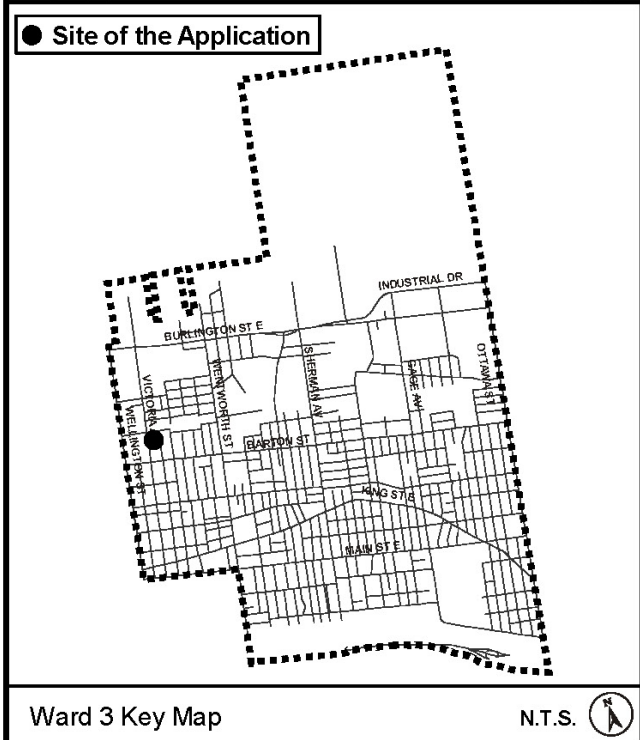
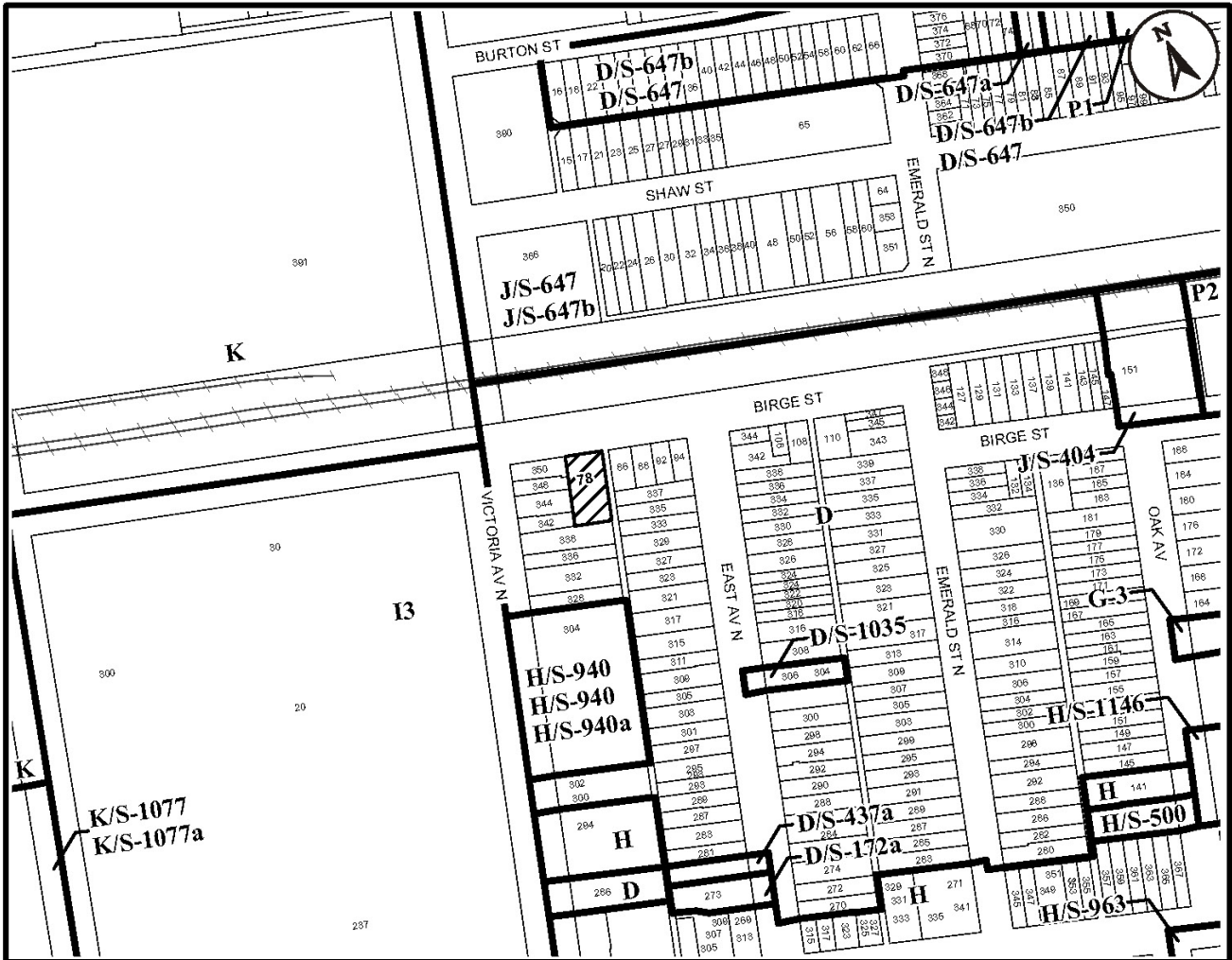
**APPENDICES / SCHEDULES**

Appendix "A": Location Map

Appendix "B": Applicant's Information Letter

JS:fp

Attach (2)



## Location Map

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

**File Name/Number:**  
PED09094(a)

**Date:**  
Feb. 16, 2011

**Appendix "A"**

**Scale:**  
N.T.S.

**Planner/Technician:**  
FP/AL

**Subject Property**

78 Birge Street

**Hamilton**

**VICTOR J.P. VERI**

FAX COVER PAGE

No. of Pages including cover 4TO: Frank PeterDATE: December 14, 2010COMPANY: City of Hamilton  
Building Services DivisionPHONE: (905) 546-2424 Ext 2781FAX: (905) 546-2764

Hello Frank,

I had received your phone message on December 9, 2010 requesting detailed information so that you may prepare a report to the Planning Committee which you expected to be considered in February 2011. As you already know by my phone messages, that I would make written comments directly to you in order to assist you in preparing your report.

In my opinion, this matter arose from a simple issue of an application for a demolition permit for a vacant building that is unfit for human occupation. The property known as #78 - 80 Birge Street and the application was paid for in full on September 1, 2010 by company cheque #0027 in the amount of four-hundred-and-twenty-two (\$422) dollars. The building has been vacant and unfit for domestic establishment for more than one year. This issue is the only issue at this time.

Should there be any other issues to be considered by your department, then I cannot participate at this time. This is not to say I will not participate in the future with your department, if and when I, as a representative for the owner of the property, would come forward for other applications I may seek from your department in abeyance of all laws and by-laws I would be subject to and governed by.

Firstly, for your assistance held in your files, I would refer you to the form "Application for a Permit to Construct or Demolish", as so authorized under subsection 8(1.1) of the Building Code Act, which I had filled out and signed on September 1, 2010. However, upon obtaining a photocopy of this application from your department on November 5, 2010, and upon its review, I realized that I was not correct in answering a

#917 Highway # 7 North, R.R. #2  
Hamilton, Ontario, L8N 2Z7  
Phone: (905) 690-3159  
Fax: (905) 690-3160

CITY OF HAMILTON	
BUILDING & LICENSING DIVISION	
PLANNING & DEVELOPMENT DEPARTMENT	
DEC 16 2010	
REC. BY _____	DATE _____
REFD TO _____	DATE _____

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question within Section E “Purpose of Application”. The question was “current use of building”, which I mistakenly answered. On November 22, 2010, I attended to amending this answer. I went to the third-floor at City Hall and, with the assistance of a counter clerk, I believe I properly amended the application on file and placed my signature to it. This answer is most factual, in response to the question posed.

Secondly, I would refer you to an additional form that was handed to me upon my request to obtain a demolition permit. This form, known as “Demolitions Permit Delegated Authority Approval (For Residential Properties)”. At the same time, I did my best to complete this form. I noted the address of the property and declared very specifically that the “existing use of building” was vacant for more than one year and all services had been removed. I failed to mention that all appliances, etc., had been removed. All this took place more than one year ago prior to submitting an application to demolish. If you need me to verify these comments, I shall.

It has not come to my attention, upon reading the definition of “dwelling unit” under *The Planning Act*, Section 33.(1) that, in my opinion, if I am correct, that by definition, this property is not a “residential property”. The reason is found in the definition itself, of “one or more persons may sleep and prepare and serve meals”. This is not possible and hasn’t been possible for more than a year.

If one looks at the building, no matter how it is “designed”, from a physical outward appearance, this itself cannot be the standard to be applied here. To be “designed” for use as a “domestic establishment”, we must rely on something more fundamental which would enable persons who “may sleep and prepare and serve meals” on the property.

I need to refer to examples to help everyone understand the true meaning of the word “designed”. In various residential locations within Hamilton, there exist buildings that look like single family dwellings from the outward “designed” appearance, however in reality, they are not single family dwellings. These buildings have not been “designed” as such that would allow them to be used “as a domestic establishment in which one or more persons may sleep and prepare and serve meals”. These buildings I refer to are owned by Horizon Utilities, formerly known as Hamilton Hydro.



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There is no question in my mind that anyone could take a building, i.e. warehouse, farm barn, etc. or a structure (i.e. farm silo, etc.) and “design” it to become “a domestic establishment in which one or more person may sleep and prepare and serve meals”. The design of the outward appearance has no force or effect upon its “use” ultimately.

It appears that *The Planning Act* Subsection 33.(2) only enables Hamilton to pass a By-Law specifically in the demolition of “the whole or any part of any residential property” in the designated area. The Act does not allow Hamilton’s By-Law to allow the delegated authority to deal with any other described types of buildings for demolition purposes. As a result of this finding, I believe this application for demolition of a vacant building should be processed under *The Building Code Act* form that I filled out and paid for on September 1, 2010.

I now have to conclude that this matter is for Council, and not the delegated authority, to make a decision whether to issue or refuse to issue a demolition permit. Furthermore, I would agree with your letter dated October 21, 2010, that this is not a routine application.

Reading further down on the form, there is a question, “Proposed Use of Property (Upon Demolition)”. It was here that I noted a parking area may be proposed for the property because Hamilton’s Zoning By-Law #06593 permits such use on the land. Not only does the existing Zoning By-Law permit the land to be used for a parking area, it also permits other types of uses. Such uses that are permitted are:

- any use permitted under a “C” district;
- a two family dwelling, together with lodgers;
- a lodging house for not more than six lodgers;
- institutional uses; and
- public uses.

For this fact, I am not ruling out any possible permitted use available to the property. It has been decided that the existing vacant building be demolished for everyone’s best interest.

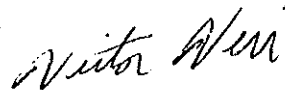
Furthermore, I represent two companies who, in turn, own four other properties

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in this area. It is perceived that through land assembly over time, more properties will be acquired as they become available. Once a critical mass has been obtained, it is very possible, and permitted right now under the Official Plan, to allow a zoning change which, in turn, would permit a commercial development that would be complimentary of the existing hospital facilities provided across Victoria Avenue North.

It is here I will conclude my writing and trust that this will be helpful to you to complete your report for presentation to the Planning Committee.

Yours truly,

A handwritten signature in cursive script that reads "Victor Veri".

Victor Veri