



CITY OF HAMILTON
PUBLIC WORKS DEPARTMENT
Engineering Services Division

TO:	Chair and Members Public Works Committee
COMMITTEE DATE:	June 19, 2017
SUBJECT/REPORT NO:	Proposed Permanent Closure and Sale of a Public Unassumed Alley Between Sydenham Road, Cross Street, Alma Street and Victoria Street, Dundas (PW17048) (Ward 13)
WARD(S) AFFECTED:	Ward 13
PREPARED BY:	Marilyn Preston (905) 546-2424, Extension 4298
SUBMITTED BY:	Susan Jacob, P.Eng. (Acting) Director, Engineering Services Public Works
SIGNATURE:	

RECOMMENDATION

- (a) That a portion of the north/south public unassumed alleyway between Sydenham Road, Cross Street, Alma Street and Victoria Street, Dundas, as shown on Appendix "A", attached to Report PW17048 (the Subject Lands), be permanently closed and sold to the owner of 63 Sydenham Road, Dundas 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 the Subject Lands;
 - (ii) That the General Manager, Public Works or his designate sign the appropriate documentation to obtain the order;
 - (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 deposit 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;
- (b) That provided the application to the Ontario Superior Court of Justice to permanently close the Subject Lands is approved:

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**SUBJECT: Proposed Permanent Closure and Sale of a Public Unassumed Alley
Between Sydenham Road, Cross Street, Alma Street and Victoria
Street, Dundas
(PW17048) (Ward 13) - Page 2 of 6**

- (i) That the City Solicitor be authorized and directed to prepare the by-law to permanently close the highway;
- (ii) That the appropriate by-law be introduced and enacted by Council;
- (iii) That the Real Estate Section of the Planning and Economic Development Department be authorized and directed to sell the closed highway to the owner of 63 Sydenham Road, Dundas, in accordance with By-Law 14-204, Sale of Land Policy By-Law, for a nominal fee;
- (iv) 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;
- (v) 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;
- (vi) 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;
- (vii) That the applicant enters into agreements with any Public Utility requiring easement protection;
- (viii) That the applicant enters into private agreements with those property owners abutting the Subject Lands, to allow those property owners unobstructed access to their properties over the Subject Lands.
- (ix) That should the alley be closed and sold, the owner of 63 Sydenham Street be required to obtain retroactive approval of a Heritage Permit for the paving of the alleyway to the satisfaction of the Director of Planning and Chief Planner."

EXECUTIVE SUMMARY

The owner of 63 Sydenham Street in Dundas has applied to permanently close and purchase a portion of the public unassumed alleyway running north/south at the rear of his property between Alma Street and Victoria Street in Dundas. The applicant and three other property owners use the section alleyway to access private parking. The three other property owners abutting the Subject Lands have informed staff that they either support or are indifferent to the sale, given the applicant agrees to provide them with permanent, unobstructed access to their properties.

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**SUBJECT: Proposed Permanent Closure and Sale of a Public Unassumed Alley
Between Sydenham Road, Cross Street, Alma Street and Victoria
Street, Dundas
(PW17048) (Ward 13) - Page 3 of 6**

The application to close and sell a portion of this alleyway has brought about significant interest from the community, both in support and in opposition of the sale.

Following the initial application to close and purchase the portion of the alleyway, Public Works staff participated in a School Travel Planning walkabout, initiated by the school, in the area of the alleyway. As a result of this walkabout, staff identified safety concerns related to students using the alleyway to access St. Augustine Catholic Elementary School. Further details related to the concerns are outlined below.

While there has been considerable interest from residents, both in support and in opposition to the alleyway sale, the proposed sale is consistent with the City's practice in this regard, and therefore staff recommend the alleyway be closed and sold to the applicant.

Alternatives for Consideration – See Page 6

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: The applicant has paid the Council approved user fee of \$4,637.00. The Subject Lands will be transferred to the owner of 63 Sydenham Road, Dundas, for a nominal fee, in accordance with the City's policy regarding the sale of public unassumed alleyways abutting residential properties.

Staffing: An agreement to purchase the Subject Lands will be negotiated by the Real Estate Section of the Planning and Economic Development Department.

Legal: The City Solicitor will prepare a by-law to permanently close the Subject Lands and will register it in the Registry Office once Council has approved the by-law. The City Solicitor will complete the transfer of the Subject Lands to the owner of 63 Sydenham Road, Dundas, pursuant to an agreement of purchase and sale or Offer to Purchase as negotiated by the Real Estate Section of the Planning and Economic Development Department.

HISTORICAL BACKGROUND

The applicant submitted the application to purchase this public unassumed alleyway on June 10, 2016. Prior to submitting the application, the applicant paved a portion of the alleyway abutting the property and this pavement remains in place at the time of the writing of this report. The applicant also erected a fence across the alleyway to block pedestrian access, which was subsequently removed.

Since receipt of the application there has been considerable interest from the broader community regarding this application for a variety of reasons, which are described generally in the consultation section of this report.

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**SUBJECT: Proposed Permanent Closure and Sale of a Public Unassumed Alley
Between Sydenham Road, Cross Street, Alma Street and Victoria
Street, Dundas
(PW17048) (Ward 13) - Page 4 of 6**

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

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

RELEVANT CONSULTATION

The following public utilities, and City departments and divisions and were provided with a copy of the application and were invited to provide comments:

- Planning and Economic Development department
 - Development Engineering
 - Building
 - Economic Development
 - Real Estate and Planning
- Public Works department
 - Engineering Services
 - Hamilton Water
 - Operations
 - Environmental Services
 - Transportation Planning Services
- Hamilton Emergency Services
- Corporate Services Department
 - Budgets and Finance
- Mayor and Ward Councillor
- Bell Canada
- Hydro One
- Horizon Utilities (Alectra)
- Union Gas

There were no objections received from any of the above listed.

On July 14, 2016, notice of the proposal was sent to property owners within a 400 foot (121.9 metre) radius of the Subject Lands, as shown on Appendix “B”, attached to report PW17048.

**SUBJECT: Proposed Permanent Closure and Sale of a Public Unassumed Alley
Between Sydenham Road, Cross Street, Alma Street and Victoria
Street, Dundas
(PW17048) (Ward 13) - Page 5 of 6**

In this instance, there were 36 notices sent with a response deadline of August 4, 2016. The City received direct notification from 21 residents in the area noting opposition to the sale, two abutting property owners noting support for the sale, and one abutting property owner noting they were indifferent to the sale.

Neighbours interested in the alleyway also shared the notice more broadly within the surrounding community. These interested neighbours advised City staff that they had collected a reported 650 signatures from those opposed to the closure and purchase of the alleyway.

In November, unrelated to the application to close and sell the alleyway, stakeholders at neighbouring St. Augustine Catholic Elementary School requested to participate in a School Travel Planning review facilitated through Public Health Services. The process includes a walkabout with school stakeholders, City of Hamilton traffic staff and public health professionals, police, parents/guardians, administrators, educators and students.

As a result of the walkabout, Public Works staff identified concerns related to traffic and pedestrians in the area of the alleyway. Concerns relate specifically to students using the alleyway and emerging to cross Alma Street mid-block during school start and finish times where there is no pedestrian infrastructure, no sidewalks and many school buses or other increased traffic in the area.

In February 2017, City staff erected signage at either end of the alleyway encouraging pedestrians, especially children, to use an alternate route to access the school. Ideally, pedestrians should cross the street at the all-way stop at Sydenham Street and Alma Street with the crossing guard, or at another appropriate location with proper pedestrian infrastructure.

In April 2017, City staff met with a group of the interested neighbours to answer questions related to the application, and communicate directly about the City's process for alleyway closures and sales. During the meeting, the community group articulated concerns related to the heritage value of the alleyway. They also presented a document outlining their concerns related to traffic around the alleyway, as well as a heat map showing the reported community support for keeping the alleyway open for public use. Both of those documents were received, however City staff did not verify or validate the content.

As part of a separate initiative the City's traffic engineering staff studied traffic patterns in this area and are continuing to work with the ward Councillor implementing traffic calming measures in and around the neighbourhood. These measures include continuing to improve safety along Sydenham Road (running parallel to the Subject Lands). Sydenham Road is proposed to have a new 18" boulevard with curb installed to further protect pedestrians.

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**SUBJECT: Proposed Permanent Closure and Sale of a Public Unassumed Alley
Between Sydenham Road, Cross Street, Alma Street and Victoria
Street, Dundas
(PW17048) (Ward 13) - Page 6 of 6**

Should the recommendations in this report be approved it is likely that access to through traffic – pedestrian or vehicular – would be prohibited by the new owner. However, should this not occur, the City would maintain the warning signs at each end of the alleyway.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

Public Works is responding to the application to close and sell the alleyway. As is the usual process, the application was circulated internally to determine if there is any practical benefit to the City maintaining ownership to the alleyway. Given that no internal stakeholders expressed interest in the alleyway, staff recommend the alleyway be closed and sold to the applicant.

ALTERNATIVES FOR CONSIDERATION

The City could deny the application and the alleyway would remain public unassumed.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Built Environment and Infrastructure

Hamilton is supported by state of the art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

APPENDICES AND SCHEDULES ATTACHED

Appendix A: Aerial Drawing

Appendix B: Location Plan