SUBJECT: Clean Up of 1759 Safari Road (PED05113) (Ward 14)

COMMENDATION:

a) That staff be authorized and directed to pay Power Property Services $42,800 for performing the work of removing rubbish and debris from 1759 Safari Road pursuant to the Property Standards Order, which became final and binding September 30, 2004.

b) That staff further be authorized and directed to exceed the amount outlined in sub-section (a) above by 10%, in order to respond to any additional unforeseen changes in the property’s condition.

c) That charges for the clean up of 1759 Safari Road, as outlined in sub-sections (a) and (b) above, be added to the property’s Tax Roll 30171053200.

d) That the lowest bidder, Power Property Services be awarded the contract to remove rubbish and debris from 1759 Safari Road.

EXECUTIVE SUMMARY:

With staff continuing to receive complaints about the condition of 1759 Safari Road and a trial date more than eight (8) months away, it is recommended that the City of Hamilton staff take steps to resolve the situation to clean up the property at 1759 Safari Road.
The Property Standards By-law authorizes clearing of all buildings, structures or debris from the site and the leaving of the site in a graded and leveled condition, where the cost of doing the work does not exceed $20,000. The lowest contractor’s estimate for clean up of 1759 Safari Road is $42,800.

A contingency amount of 10% of the contractor’s estimated cost ($4,280) is being requested to permit staff the flexibility to respond to any changes in the property’s condition.

As of August 22, 2005 property taxes for 1759 Safari Road have been paid in full.

Staff has worked closely with Legal Services and Hamilton Police Services to co-ordinate the clean up of 1759 Safari Road, to ensure that the rubbish and debris removed is consistent with authorities provided for by legislation and that the clean up does not interfere with any other agencies’ investigations.

**BACKGROUND:**

On May 17, 2004, City staff attended 1759 Safari Road with the Hamilton Police Services. Staff undertook a Property Standards investigation and noted a number of violations. Also in attendance during this investigation were the following agencies; Ontario Provincial Police, Royal Canadian Mounted Police, Ministry of the Environment and Animal Control, each conducting investigations pursuant to their respective authorizations.

As a result of the inspection of May 17, a Property Standards Order was issued on June 4, 2004 to Manuel Joe Fagundes and Valentina Maria Fagundes, owners of 1759 Safari Road, Hamilton (formerly Flamborough), pursuant to the City of Hamilton Property Standards By-law 03-117, Section 19(1) which states that:

“Yards shall be kept clean and free from rubbish or other debris and from objects or conditions that might create a health, fire or accident hazard or an unsafe condition.”

The Order required the owners of 1759 Safari Road to remove all waste lumber; bones, feathers, hides or other animal parts or carcasses; fuel tanks; inoperative machinery, inoperative motor vehicles and parts or accessories of such items; construction, demolition, repair or renovation debris or leftovers from such work (including cement and old bricks); and fill contaminated with petrochemical or petroleum products, within 28 days.

On June 23, 2004, Manuel Joe Fagundes appealed the Order stating that there was insufficient time to clean up the property and Mr. Fagundes requested reasonable time to do the work. Mr. Fagundes also stated in his appeal that there were insufficient particulars as to what is to be removed from the property. The appeal was accepted and a hearing before the Property Standards Committee was conducted on August 23, 2004. The Property Standards Committee modified the Order with respect to time to comply by extending the compliance date to September 30, 2004. Otherwise, the remainder of the Orders were confirmed by the Committee. The Orders were not appealed to the Ontario courts.
Re-inspections of 1759 Safari Road by staff from the Standards and Licensing Section indicated that the now Final and Binding Order had not been complied with, therefore, charges pursuant to the Property Standards By-law were laid on January 4, 2005. A trial date has been set for February 24, 2006 at 9:00 a.m.

On May 9, 2005 staff requested that Legal Services register the Final and Binding Order on Title and the Order has now been so registered as per Section 15.2(4) of The Ontario Building Code Act, 1992. The registration on title of a Property Standards Order means that should the present owner sell the property the Order will be binding on subsequent owners.

POWER OF CORPORATION TO REPAIR OR DEMOLISH

With staff continuing to receive complaints about the condition of 1759 Safari Road, a trial date more than eight (8) months away and the community demanding, in combination with political expectation and pressure, that the City of Hamilton take steps to resolve the situation, staff is recommending the clean up of the property at 1759 Safari Road.

Section 42(1) of the Property Standards By-law provides that if the owner or occupant of a property fails to repair or to demolish the property in accordance with an Order as confirmed or modified, the City in addition to all other remedies:

(a) may repair or demolish the property;
(b) may clear the site of all buildings, structures, debris or refuse and leave the site in a graded and leveled condition; or,
(c) may make the site safe or impede entry by erecting fences, barricades or barriers.

The Property Standards By-law authorizes clearing of all buildings, structures or debris from the site and the leaving of the site in a graded and leveled condition, where the cost of doing the work does not exceed $20,000.

Staff has received an estimate from Power Property Services regarding the clean up of 1759 Safari Road at $42,800 and therefore requires Council approval to exceed the $20,000 maximum limit permitted in the By-law.

What Is To Be Cleaned Up?

On June 7, 2005 staff attended 1759 Safari Road for the purposes of identifying, documenting and assessing the property for the purposes of clean up. The following is a list of the rubbish and debris that staff has identified to be removed from the property pursuant to the Property Standards Order which became final and binding on September 30, 2004:

1) Approximately 40 vehicles, including cars and trucks
2) 2 full size school buses and 1 small bus
3) 1 duel wheel axle truck cab
4) 2 tractor trailers
5) 2 boats
6) 1 box van
7) Approximately 10 pick-up truck boxes
8) Approximately 8 pick-up truck caps
9) Front end of a bus
10) Various car parts, including bumpers, engine parts, vehicles seats
11) Steel scaffolding
12) Approximately 1,000 tires
13) Approximately 9,000 cubic yards of rubble debris including, broken concrete, bricks, block, rebar, wiring, pieces of metal and plumbing parts
14) Miscellaneous wood, metal and various debris

Operational Plan and Cost

Staff has worked closely with Legal Services and Hamilton Police Services to co-ordinate the clean up of 1759 Safari Road to ensure that the rubbish and debris to be removed is consistent with authorities provided for by legislation and that the clean up does not interfere with any other agencies investigation.

Staff recognize that some of the rubbish and debris removed from the property may have salvage value and, as such, this value will be used to reduce the cost of the clean up. Debris in the form of wrecked, decayed, dilapidated, or inoperative vehicles or machinery, and parts thereof, will be towed from the property to a location until a salvage value can be obtained. Debris in the form of garbage, rubbish and refuse will be removed from the property by heavy machinery, loaded in to dump trucks or dumpsters and taken to a proper waste disposal site.

Staff has requested and received quotes for the clean up using the appropriate contractors noted on the commodity/service recourses of the Purchasing Section.

Quotations to clean up 1759 Safari Road range from $42,800 to $225,000, with the quote from Power Property Services submitted as the lowest.

Generally, when Orders are brought into compliance with the Property Standards By-law staff is rarely in attendance as most work assigned to contractors is routine. Given the magnitude of this clean up, a number of City of Hamilton staff, supported by the Hamilton Police Service will be in attendance during the clean up. On-site staff will provide the following important functions:

- Ensure that the integrity of the Order is maintained
- On-site assessment of what is being removed
- Provide first hand direction and support for the contractor awarded the contract to clean up the property
- Document all items removed from the property
- Respond to any additional accumulation of rubbish and debris

It is important to grant staff working on site the authority and flexibility to respond and exceed the estimated cost of clean up, accounting for unforeseen changes which may arise given the time between inspections of the property. An additional authority up to
10% on top of the contractors estimate would permit staff to respond to any additional unforeseen changes in the properties condition.

On June 28, 2005 staff issued a letter to Manuel Joe Fagundes and Valentina Maria Fagundes, owners of 1759 Safari Road, advising them that pursuant to Section 42(1) of the City of Hamilton Property Standards By-law No. 03-117 the City of Hamilton will be entering 1759 Safari Road Hamilton, Ontario for the purpose of undertaking work and/or repairs required by the Order, specifically, the removal of all rubbish and debris; including debris in the form of decayed, dilapidated, or inoperative vehicles or machinery, and parts thereof. All costs and expenses associated with the actions and work completed by the City of Hamilton will be added to the Municipal property taxes for 1759 Safari Road. The purpose of the letter was to advise the owners, Manuel Joe Fagundes and Valentina Maria Fagundes, of the City’s intent to clean up the property and provide them with an additional opportunity to bring the property into compliance with the Final and Binding Order.

Once Council has provided authority and direction to staff to undertake this clean-up a further letter will be issued to Manuel Joe Fagundes and Valentina Maria Fagundes, owners of 1759 Safari Road, advising them that the City of Hamilton will be entering 1759 Safari Road, Hamilton, Ontario, for the purpose of undertaking work and/or repairs required by the Order.

Staff will also, with the assistance of the Purchasing and Legal Services, interview the successful contractor to ensure that the contractor awarded the contract is capable of delivering the service so quoted.

**ANALYSIS OF ALTERNATIVES:**

As an alternative to the above, staff’s recommendation to Council may wait for the outcome of the trial scheduled for February 24, 2006 at 9:00 a.m., wherein the charges laid will be heard. Should the City be successful in obtaining a conviction, submissions for penalty may include a court prohibition directed at the owners of 1759 Safari Road from continuing to violate the City of Hamilton’s Property Standards By-law. It must be noted that prosecutors from the City may ask the courts for such a prohibition but the Court may not choose to endorse such a request.

Affirmative action now on the part of the City of Hamilton provides the City with control over the situation at 1759 Safari Road by bringing the property into compliance with the Property Standards By-law. Therefore, the reason for the City of Hamilton to undertake the clean up of 1759 Safari Road reflects a timing, control and certainty of repair issue.

Even upon a successful prosecution and a conviction obtained, it is possible that the Court may not order a prohibition; therefore, the City may find itself addressing the recommendation to clean up 1759 Safari Road again in the future.
FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial

As of August 22, 2005 property taxes for 1759 Safari Road have been paid in full.

The Building Code Act, 1992, provides for a lien against the property for amounts expended in repair, with a priority lien status (collection in the same manner and priority as property taxes). The expense for staff time directly involved in the repair and required to ensure the repair is properly and reasonably done is collectable by the City in the same manner as the contractor’s expenses.

Staffing – N/A.

Legal

The Property Standards By-law 03-117 requires Council approval for the cost of repairs or clean up over $20,000. The By-law is enacted under the Building Code Act, 1992, which Act provides authority for the City to carry out repairs or demolition as required by Final and Binding Orders. The Act also gives authority to enter private property for this purpose without a warrant, at reasonable times, protection from liability for the City and its agents.

POLICIES AFFECTING PROPOSAL:

Section 37(3)(b) of the City of Hamilton’s Property Standards By-law authorizes a Property Standards Officer, to undertake the clearing of all buildings, structures or debris from the site and the leaving of the site in a graded and leveled condition, where the cost of doing the work does not exceed $20,000. Council approval is required for expenses which exceed this amount.

CONSULTATION WITH RELEVANT DEPARTMENTS/AGENCIES:

- Legal Services
- Purchasing
- Hamilton Police Services

CITY STRATEGIC COMMITMENT:

The recommended clean up of 1759 Safari Road, pursuant to the City of Hamilton's Property Standards By-law, will serve to protect the health and safety of the public, promote quality of life and the maintenance of the physical environment of the properties surrounding 1759 Safari Road, which includes the neighbourhoods and communities within the area.

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