SUBJECT: Removal of Restrictive Covenants – 276 Wellington Street North (PED09231) (Ward 3)

RECOMMENDATION:

That Council’s resolution of March 4, 1999, be rescinded and that the Legal Services Division be authorized and directed to prepare the necessary documents to facilitate the release of the restrictive covenants attached to the property at 276 Wellington Street North.

EXECUTIVE SUMMARY:

This property is located at the southwest corner of Barton Street East and Wellington Street North across the street from the Hamilton General Hospital. The owner of this property, Gary Waxman, is requesting City Council to rescind a March 4, 1999, resolution which imposed a covenant on the property which restricted the use of a public parking lot. The resolution of March 4, 1999, stated the following:

Regarding an application by Paul Ennis, in trust, owner of 276 Wellington Street North for a demolition permit for the building on this property, it is recommended that the Building Commissioner be authorized to issue a demolition permit provided the following has first been fulfilled:

i) That the applicant has registered on title to this property a restriction under which the applicant covenants to the City that neither he nor his successors in title shall use this property for purposes of a public parking lot. The said restriction shall be
prepared and registered by the applicant’s lawyer in a form satisfactory to the Corporate Counsel.

This covenant was properly registered on title in accordance with the resolution. The owner is requesting to have this restriction removed so that he can sell the property and the new owners can merge these lands with adjoining lands and develop a public parking lot.

This property is located in an H zoning district and a public parking lot is permitted subject to compliance with the G-3 provisions of the Hamilton Zoning By-law and a Site Plan Application in the normal manner. The owner, at that time, did not have immediate plans to develop the lands for a public parking lot, however, he wanted to demolish the vacant eight (8) unit multiple dwelling so he fulfilled the request of Council and had his lawyer register the covenant to the satisfaction of Corporate Counsel.

BACKGROUND:

On November 10, 1998, Council denied a demolition permit until a building permit had been issued to replace the subject building. This property is located in the Central Area as determined by a Council resolution passed on July 26, 1994, and as such appropriate conditions for Demolition Control under Section 33 of the Planning Act were applied to all buildings with a residential component in the Central Area. The owner had not applied for a replacement building and therefore the demolition was denied.

On March 9, 1999, Council reconsidered the demolition permit, at the request of the owner, and approved the demolition of building subject to the applicant registering on title a restriction under which the applicant covenants to the City that neither he nor his successors in title shall use the property for the purposes of a public parking lot.

In 2004 the owner applied for a Site Plan Application and received minor variances from the Committee of Adjustment to permit the lands to be used for a public parking lot, however, the owner did not proceed with the parking lot at that time.

Mr. Waxman is requesting Council to rescind the resolution as he has an offer to purchase the property for the purposes of merging lands in title with adjoining lands for the purpose of a proposed public parking lot which is a permitted use.

As of this date the required Site Plan Application has not been submitted for review.

This land is located in Ward 3. Please see attached location map shown as Appendix A to Report PED09231.

No Hamilton Municipal Heritage Committee interest. Lot size 13.7m x 25.8m

The owner of the property is:

Gary Waxman
c/o 9 Stonegate Drive
Ancaster, ON L9G 3P3
ANALYSIS/RATIONALE:
The Department has no concerns with releasing the covenant. Zoning permits the use; public were given notice at the time of the Committee of Adjustment application with no concerns raised and parking is needed for the adjacent hospital use. As well, there is no planning policy such as the Hamilton Official Plan, new Urban Official Plan or Secondary Plan that prohibits parking lots.

ALTERNATIVES FOR CONSIDERATION:
Council could refuse to release the covenant which could result in legal proceedings.

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:
N/A

POLICIES AFFECTING PROPOSAL:
N/A

RELEVANT CONSULTATION:
Legal Services Division and Development Planning Section.

CITY STRATEGIC COMMITMENT:
By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. ☑ Yes ☐ No

Redevelopment of this property for the purposes of a public parking lot will provide additional parking for the Hamilton General Hospital.

Environmental Well-Being is enhanced. ☐ Yes ☑ No

Economic Well-Being is enhanced. ☑ Yes ☐ No

Investment in Hamilton is enhanced and supported.

Redevelopment of this property for the purposes of a public parking lot will provide additional taxes to the City.

Does the option you are recommending create value across all three bottom lines? ☑ Yes ☐ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants? ☑ Yes ☐ No

FP: fp - Attach. (1)
Location Map

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

File Name/Number: 276 Wellington Street North_PED09231
Date: August 26, 2009
Appendix "A" Scale: N.T.S. Planner/Technician: FP/IF

Subject Property

276 Wellington Street North

Ward 3 Key Map N.T.S.