SUBJECT: Agreement to Accept Compensation – Kenneth Nichol Ramey Easement Expropriation of Part of 1041 West 5th Street, Part 1 on Expropriation Plan WE424570 (PW07025) / (LS07003) / (PED07085) (Ward 8)

RECOMMENDATION:

(a) That an Agreement by the Owner to Accept Compensation, resulting from the expropriation of certain lands known as part of 1041 West 5th Street, Hamilton (as shown on Appendix A to Report PW07025 / LS07003 / PED07085), executed on January 24, 2007 by Kenneth Nichol Ramey, scheduled to close on or before April 12, 2007, for the expropriated sewer easement over lands designated as Part 1 on Expropriation Plan WE424570, registered on October 5, 2006, also described as Part 1 on Plan 62R-15255, being part of PIN # 16912-0018, be approved and completed, and that the sum of $69,000 be charged to Capital Budget Item No. 5160480483 (West 5th Street Sanitary Sewer).
(b) That the sum of Sixty-Nine Thousand Dollars ($69,000), resulting from the settlement of the easement expropriation of part of 1041 West 5th Street, be paid to Brechin & Huffman (Scott Henderson in Trust) for Kenneth Nichol Ramey pending the completion of all of the terms and conditions of the Agreement by Owner to Accept Compensation.

(c) That the following conditions form part of the Ramey Agreement to Accept Compensation:

“It is understood and agreed that forming part of and as a condition of this Agreement by Owner to Accept Compensation document that the undersigned Owner will enter into and execute the TEMPORARY CONSTRUCTION EASEMENT AND ACCESS/AUTHORITY TO ENTER AGREEMENT attached hereto as Schedule “D”, over the lands described as:

part of Lot 15, Concession 8 of the former Township of Barton, now in the City of Hamilton, with a width of 10.0 metres (32.8 feet), having a depth of 146.936 metres (482.0 feet) more or less comprising an area of 1,469.3 metres square (0.363 acres) more or less, being part of PIN # 16912-0018, part of Roll # 251808095102480, as shown in Schedule “D-1”, known municipally as being part of address 1041 West 5th Street, Hamilton. These lands are being acquired by the City of Hamilton for a temporary construction easement.

These lands are required for access and construction purposes and are located adjacent to and north of the expropriated 10.0 metre (32.8 feet) wide permanent sewer easement described as Part 1 on Plan 62R-15255, being Part 1 on Expropriation Plan WE424570. “

(d) That a Temporary Construction Easement and Access/Authority to Enter Agreement over certain lands described as part of Lot 15, Concession 8, of the former Township of Barton, now in the City Of Hamilton, with a width of 10.0 metres (32.8 feet), having a depth of 146.936 metres (482.0 feet) more or less comprising an area of 1,469.3 metres square (0.363 acres) more or less, being part of PIN # 16912-0018, part of Roll # 251808095102480, known municipally as being part of address 1041 West 5th Street, Hamilton, these lands being located adjacent to and north of the expropriated 10.0 metre (32.8 feet) wide permanent sewer easement described as Part 1 on Plan 62R-15255, described as Part 1 on Expropriation Plan WE424570, executed on January 24, 2007 by Kenneth Nichol Ramey, scheduled to close on or before April 12, 2007, be approved and completed and that the sum of $6,700 for the temporary municipal use of the subject lands be paid to Brechin & Huffman (Scott Henderson in Trust) for Kenneth Nichol Ramey pending the completion of all of the terms and conditions of the Agreement by Owner to Accept Compensation, and that this $6,700 amount be charged to Capital Budget Item No. 5160480483 (West 5th Street Sanitary Sewer).
EXECUTIVE SUMMARY:

The purpose of this report is to request City Council’s approval to confirm the full and final settlement of an outstanding sanitary sewer easement expropriation of the lands located at 1041 West 5th Street for the all-inclusive amount of $69,000.

The terms of the settlement require Ramey to provide a temporary construction easement and access to the lands located north of the expropriated easement to facilitate and expedite the sewer construction and that a payment of $6,700 be authorized for the municipal use of these additional lands.

BACKGROUND:


As a result of failing septic systems and the health concerns for homeowners on West 5th Street located north of Rymal Road West, and in an attempt to expedite the provision of municipal sanitary services to these homeowners, City Council, on September 28, 2005, approved Item 6 of Public Works, Infrastructure and Environmental Committee
SUBJECT: Agreement to Accept Compensation – Kenneth Nichol Ramey Easement Expropriation of Part of 1041 West 5th Street, Part 1 on Expropriation Plan WE424570 (PW07025) / (LS07003) / (PED07085) (Ward 8) - Page 4 of 6

Report 05-013, authorizing the initiation of expropriation procedures for the sanitary sewer easement over a portion of the Kenneth Ramey lands located at 1041 West 5th Street. These privately owned lands are required to connect from an existing sewer on Upper James to the road allowance of West 5th Street and subsequent to the homeowners on West 5th. Real Estate staff had attempted to negotiate an agreement to purchase the easement, but was not successful within the required timeframe.

City Council, on August 9, 2006, approved Item 8.6 of Committee of the Whole Report 06-018, approving the expropriation of Part 1 on Plan 62R-15255 for the sanitary sewer easement over the Ramey lands at 1041 West 5th Street.

City Council, on January 10, 2007, approved Item 14 of Committee of the Whole Report 07-001, authorizing the Official Offer of Compensation to Kenneth Ramey, in the amount of $60,750, for the market value of the interest in the lands taken based on an external Appraisal for the sanitary sewer easement over Part 1 on Plan 62R-15255, being Part on Expropriation Plan WE424570.

With a sense that the matter would eventually go to the Ontario Municipal Board if a prompt compromise were not reached, Real Estate staff had numerous meetings with the owner and with his lawyer in recent months in an attempt to conclude the settlement of the subject expropriation. It was finally concluded that the City and the owner would agree to an all-encompassing settlement in the amount of $69,000. This negotiated settlement at $69,000 is greater that the City Council approved Official Offer of $60,750 but would include, without limitation, the negotiated value of all easement land compensation, any injurious claim to the owners lands not acquired, all statutory interest from the date of the expropriation, all legal fees and disbursements, any appraisal fees, payment for owners time and inconvenience and any and all other claims to compensation as set out in the Expropriations Act, as a full and final payment.

As a condition of this Agreement to Accept Compensation, staff requested and the owner Ramey agreed, to aid the City of Hamilton to facilitate the commencement of the construction of the sewer easement works from Upper James to West 5th Street by providing a 10-metre wide temporary construction easement adjacent and to the north of the expropriated permanent easement.

Staff from Public Works, Legal Services and Real Estate support this Agreement as it represents a fair and reasonable settlement to this expropriation and avoids the risk of having to mount an expensive defence at the Ontario Municipal Board and to pay further amounts in legal, appraisal, planning fees, interest costs and staff time.

ANALYSIS/RATIONALE:

Approval of the terms of the Agreement will remove an outstanding litigation matter and additional financial and legal claims against the City. Staff time would be freed up to pursue other legal and real estate matters and would avoid the risk of a larger monetary settlement imposed upon the City at the Ontario Municipal Board.
ALTERTIVES FOR CONSIDERATION:

City staff could, if directed by Council, attempt to negotiate better financial terms than the agreed payout settlement of $69,000, but any further delays could force the owner to request an OMB Hearing and the City would risk the imposition of a larger monetary settlement and the corresponding legal and appraisal fees that would go with a Hearing. This option is not recommended.

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial: Sufficient funds are available in Capital Budget Item No. 5160480483 (West 5th Street Sanitary Sewer).

Staffing: N/A.

Legal: Services of Legal Services will be required to finalize the Agreement and deal with registration of deeds, discharges, releases and notices on title.

POLICIES AFFECTING PROPOSAL:

The City of Hamilton, as an Expropriating Authority and as an Approving Authority under the Expropriations Act, is required to attempt to resolve issues of value of the lands or interests acquired by the City under the Expropriations Act. The proposed settlement deals with this obligation of the City and does not require any changes to City policy.

RELEVANT CONSULTATION:

The following sections were consulted in the preparation of this report:

- Capital Planning and Implementation Division, Public Works Department
- Legal Services Division, City Manager’s Office

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
Public utility services and programs are delivered in an equitable, coordinated, efficient manner and accessible to all citizens. This financial settlement is the final step for the expropriation of this property on West 5th needed for the construction of a new sanitary sewage line to replace the old failing septic systems on West 5th.
Environmental Well-Being is enhanced.  ✔Yes  ☐No
Human health and safety are protected. The failing individual sanitary systems are being replaced with a new municipal gravity sewer line. This financial settlement for the subject property is the concluding phase of this part of the project.

Economic Well-Being is enhanced.  ✔Yes  ☐No
The proposed recommendation avoids the risks of a higher settlement imposed on the City at the OMB.

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

:VDP
Attach. (1)
Agreement to Accept Compensation
Expropriation of Easement - part of 1041 West 5th St.
Part 1 on Expropriation Plan WE424570
for Sanitary Sewer

CITY OF HAMILTON

LEGEND

SUBJECT LAND

HAMPTON
WARD 8

SCALE
NOT TO SCALE
2007-03-12
File No. 2003 005