TO: Chair and Members
Economic Development and Planning Committee

WARD(S) AFFECTED: CITY WIDE

COMMITTEE DATE: March 2, 2010

SUBJECT/REPORT NO: Delegated Authority To Incorporate City Reserve Lands into Public Highway (PED10051) (City Wide)

SUBMITTED BY:
Tim McCabe,
General Manager
Planning and Economic Development Department

PREPARED BY:
Mark Inrig, 905-546-2424, Ext. 4303

SIGNATURE:

RECOMMENDATION:

That the General Manager of Public Works be authorized and directed to prepare by-laws under the provisions of subsection 31(2) of the Municipal Act, as amended, and place before Council for enactment, to incorporate City reserve lands into public highway, provided:

(a) The land encumbered by the reserve is under an application to subdivide or develop that has been approved the City;

(b) The incorporating by-laws are in a standard form satisfactory to the City Solicitor;

(c) The General Manager of Planning and Economic Development has confirmed that all outstanding requirements with respect to the reserve lands have been completed to the satisfaction of the City.
EXECUTIVE SUMMARY

The need for this report has arisen from a Ministry of Government Services bulletin issued in December 2009 as shown on Appendix “A” to Report PED10051 to all land registry offices prohibiting the practice of “municipal self to self transfers” to incorporate City reserve lands into public highway. The City has been using this method as a solution to the very inefficient and time consuming process of preparing staff reports to the City’s standing committee for approval before adoption by Council for each City reserve that required preparation and registration of a by-law to incorporate the reserve land into public highway. Approximately 30 to 50 reserves are incorporated into public highways each year.

In order to maintain an efficient level of service that the City has provided, staff is seeking delegated authority to prepare and submit incorporating by-laws directly to Council, without the need to prepare a staff report to the City’s standing committee for each by-law, to avoid the City’s lengthy report cycle.

The recommendations in the report are consistent with the City’s “open for business” philosophy to provide higher level of service to help facilitate the needs of the development industry and general public.

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

There are no Financial / Staffing or Legal implications resulting from the recommendation within this report

HISTORICAL BACKGROUND (Chronology of events)

A reserve is a narrow strip of City land, usually 0.3 metres wide, which is used to physically separate private land from the abutting public highway. Reserves are established by the City and generally used as a mechanism to control access to, and development of, the abutting private land. Without direct access to a public highway, the private lands that are encumbered by a reserve cannot meet the requirements of the City’s zoning by-law, and therefore, development cannot proceed on the land. In almost all cases there is one or more requirement of the City which must be satisfied by the abutting private land owner before a reserve can be incorporated into the public highway (e.g. the owner may be required to pay for outstanding servicing costs).

The need to establish a reserve is usually identified by the City upon review of a developer’s plan of subdivision. Reserves are usually established along one side, or at the dead-end, of a road allowance where a road abuts vacant, undeveloped land. When a subdivision plan with a reserve is registered, the reserve land is transferred to the City by the subdividing land owner by registration of a transfer deed.
Up until a few years ago the City incorporated reserves into the public highway by preparation and registration of an incorporating by-law, which required preparation of a staff report to the City’s standing committee before the incorporating by-law could be approved by Council. Reserve lands were incorporated into public highway on a case by case basis and each incorporating by-law was subjected to the City lengthy report cycle. This process was very inefficient because reserve lands could not become public highway until Council approved preparation of the incorporating by-law. The delay between the time when a reserve could be incorporated into public highway and when Council ultimately approved the by-law for registration was usually about six weeks. Land owners developing land encumbered by a reserve were often frustrated by the delays of this process.

To streamline the process the City began incorporating reserves into the abutting road allowance, using the provisions of subsection 31(6) of the Municipal Act, by registering a transfer deed at the Registry Office that conveys the land from the City to the City as a widening of the abutting public highway (municipal self to self transfers). Upon registration of the transfer deed the reserve land became part of the public highway. This process was extremely efficient because, once a land owner satisfied all requirements with respect to a reserve City staff could incorporate the reserve into the public highway very quickly without any delay to the developing land owner. Unfortunately, in December 2009, the Ministry of Government Services for the province issued a bulletin (No. 2009-08, entitled “Municipal Self to Self Transfers”) to all land registry offices prohibiting this practice as shown on Appendix “A” to Report PED10051.

In light of the foregoing, the City has no other means to incorporate reserve lands into public highway and must resort to the old process of preparation and registration of incorporating by-laws. To maintain an efficient level of service that the development industry has now become accustomed to, staff is seeking delegated authority to prepare and submit incorporating by-laws directly to Council, without the need to prepare a staff report to the City’s standing committee for each by-law.

**POLICY IMPLICATIONS**

There are no policy implications as a result of the recommendation in this report. The purpose of this report is to streamline the City’s process to incorporate a reserve into public highway.

**RELEVANT CONSULTATION**

This report has been prepared on advice provided by the City Solicitor and in consultation with staff from the Survey and Technical Services Section of the City’s Public Works Department.
ANALYSIS / RATIONALE FOR RECOMMENDATION
(include Performance Measurement/Benchmarking Data, if applicable)

Incorporation of City reserve lands into public highway almost always results from an application received by the City to develop or subdivide the land encumbered by a reserve. As a result, the land has been subjected to the City’s planning review process and has satisfied all conditions of the City with respect to planning, engineering and zoning requirements. Incorporation of city reserve lands into the City’s public highway is the final step of that planning review and approval process.

It is the opinion of staff that subjecting a land owner or developer to additional time delays associated with preparation of a staff report that must pass through the City’s internal report cycle for approval by the City’s standing committee before adoption by Council is inappropriate at such a late stage in the development approval process for land that has already received approval by the City. Preparation of staff reports for each incorporating by-law would not be consistent with the City’s “open for business” philosophy to provide higher level of service to help facilitate the needs of the development industry and general public.

ALTERNATIVES FOR CONSIDERATION:
(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

There are two (2) alternatives staff considered in addressing the Ministry’s recent bulletin prohibiting the process of “municipal self to self transfers” to incorporate reserve lands into public highway.

The first alternative is to revert back to the City’s previous process of preparing reports to Council to incorporate reserve lands into public highway on a case by case basis. This alternative would create time delays as this is subject to standing committee and Council meeting schedules. This process was particularly cumbersome during the summer months, when Council meetings are less frequent and development activity is most active.

The second, and recommended alternative, is for staff to have delegated authority from Council to prepare and submit incorporating by-laws directly to Council without the need to prepare a staff report requiring approval by its standing committee first, provided:

(a) The land encumbered by the reserve is under an application to subdivide or develop that has been approved the City;

(b) The by-law is in a form satisfactory to City Solicitor; and

(c) All requirements with regard to the reserve have been completed by the abutting land owner to the City’s satisfaction.
In virtually every case where a reserve is incorporated into public highway it is done to allow development of land that has gone through the City’s planning process under some form of development application that has received approval by the City. Therefore, incorporation of a reserve land into the city’s public highway is simply the final step in the planning approval process to allow development to proceed. No further review or approval by the City should be required at this late period in the development process other than adoption of the incorporating by-law.

It is the opinion of staff that the second alternative is more desirable because it addresses the timing issue expressed by the development community and it does not compromise the City’s development process.

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

In keeping with the corporate strategic plan, the recommendations in this report attempt to provide delivery of municipal services in a sustainable, innovative and cost effective manner.

**APPENDICES / SCHEDULES**

Appendix “A” to Report PED10051 - Ministry of Government Services Bulletin No. 2009-08, "Municipal Self to Self Transfers"

MJI:tl
Recently, some municipalities have registered transfers from the municipality to itself in an attempt to establish previously obtained lands as public highway. The transfers' reference subsection 31(6) of the Municipal Act, 2001 as the authority for establishing the lands as public highway but, the subsection specifically requires that the land be acquired by the municipality for road widening purposes. The Municipal Act, 2001 provides a mechanism to address the creation of a public highway where the property is already owned by the municipality and the resulting document is acceptable for registration in the land titles systems.

Therefore, effective immediately, municipal transfers to itself will not be accepted on lands governed by the Land Titles Act. Any such document that is registered will be withdrawn by the Land Registrar following the procedures of subsection 78(2) of the Land Titles Act and in accordance with Bulletin 2002-01.

Should you have any questions on this matter, please contact your Regional Surveyor.

(Original signed by)

Katherine M. Murray Director of Titles

Ministry of Government Services
Service Ontario
Policy and Regulatory Services Branch