SUBJECT: Sale of City Owned Property - Part of 128 Limeridge Road East and Part of 1306 Upper Wellington Street to the Estates of Hendrikus Van De Kuyt and Cornelis Groenwegen (PED05185) (Ward 7)

RECOMMENDATION:

(a) That City Council approve, as the approving authority under the provisions of the Expropriation Act, the disposal of the lands identified above, to the Estate of the original owners from whom the lands were expropriated, providing this Estate with the first right to repurchase the lands.

(b) That an Offer to Purchase executed by the Estates of Hendrikus Van De Kuyt and Cornelis Groenwegen, on November 10, 2005, and scheduled to close on or before January 16, 2006, for the acquisition of vacant land in the City of Hamilton, fronting on the east side of Lorenzo Drive and the south side of Colin Crescent (as shown on Appendix “A” to Report PED05185 attached), legally described as Part 6, on Plan 62R-16787 (as shown on Appendix “B” to Report PED05185 attached), having an area of 0.98 hectares (2.420 acres), more or less, and Part 1 on Plan 62R-17178 (as shown on Appendix “C” to Report PED05185 attached), having an area of 0.03 hectares (0.082 acres), more or less, having a combined area of 1.012 hectares (2.503 acres), more or less, be approved and completed and the funds derived from the sale, being $757,000, subject to adjustments, be credited to account "Freeway Land Purchases" - 47702 4060087001.

(c) That the required deposit cheque, in the amount of $76,000, being slightly greater than 10% of the purchase price, be held by the General Manager of Finance and Corporate Services pending acceptance of this transaction.
(d) That upon successful completion of this sale, a real estate commission of $37,850, plus GST, (commission of 5% of the $757,000 sale price) be paid to Chambers Commercial Real Estate Group Inc, Jack Robertson, Associate Broker, who acted in this matter.

(e) That the sum of $757,000, less commission of $37,850, plus GST, and less the associated cost to prepare the property for sale as identified in Clause (f), be credited to the "Freeway Land Purchases" - 47702 4060087001.

(f) That the sum of $23,728 be credited to Account HAMTN 47702-3560150200 (Reserve for Property Purchases), which is the cost to prepare the property for sale.

(g) That the sale price of $757,000 does not include the Goods and Service Tax; should the GST be applicable and collected by the City, the GST amount is to be credited to Account No. 22835 009000 (GST Payable).

(h) That the completion of this transaction be subject to the following conditions as imposed by staff and abstracted from the Offer to Purchase:

16. The Purchaser acknowledges and agrees that there are no warranties and/or representations by the Vendor whatsoever with respect to the property and that the property is being purchased on an "as is", "where is" basis, except as specifically herein provided. The Purchaser acknowledges that he has relied entirely upon his own inspection and investigation with respect to quantity, value and title of the property.

17. The Purchaser acknowledges that he has inspected the property and has conducted an independent investigation of present and past uses of the property; and that the Purchaser has not relied on any representations by the Vendor concerning any condition of the property, environment or otherwise, except as noted herein. The Purchaser agrees to assume the property subject to any outstanding work orders, legislative, zoning, fire and building code violations.

18. The Vendor makes no representation, warranty, condition either expressed or implied as to soil or other environmental conditions, utilities, fitness for purpose of zoning and building by-laws, park, road widening or other possible dedications, or as to charges, levies and regulation of the City, Utilities or other regulatory authorities. The Purchaser shall inspect the property and shall satisfy himself in respect to such matters prior to submitting this Offer.

19. The Purchaser indemnifies and saves harmless the Vendor from any and all claims, costs, damages, demands, fines or awards that may arise directly or indirectly as a result of the condition of the Property, including any environmental conditions.
20. It is understood and agreed that the Purchaser shall, at the Purchaser's sole cost and expense, obtain the approval of the Vendor for any development on the subject lands, as defined in The Planning Act, 1990, as amended, prior to commencement of such development/subdivision and approval as defined in The Planning Act, 1990, as amended, prior to commencement of such development/subdivision.

21. The Purchaser shall, at the Purchaser's sole cost and expense, submit an application for draft plan of subdivision approval for residential purposes over the subject lands within three months of the acceptance of this transaction. Notwithstanding any other statement contained in this Agreement, nothing herein shall be interrupted to constitute pre-approval by the Vendor of the Purchaser's proposed development of the lands, and the Vendor makes no representations or warranties herein, as to the result of any application the Purchaser may submit to the Vendor in respect of the lands, but the Vendor agrees that it shall not unreasonably withhold the granting of any approvals in respect thereof.

22. The Purchaser shall, at the Purchaser's sole cost and expense, register a plan of subdivision for residential purposes for the subject lands within one year of obtaining draft plan approval, provided the said one year period may be extended for any delays caused by the Vendor, at the sole discretion of the Vendor or in the event an appeal is lodged with the Ontario Municipal Board.

23. The Purchaser shall, at the Purchaser's sole cost and expense, obtain all governmental permits and approvals required for the Purchaser's proposed development and use of the lands and satisfy all requirements and restrictions imposed by the vendor and by all government authorities having jurisdiction at the Purchaser's own cost.

24. No transfer of the said land shall be made by the Purchaser until the Vendor confirms that the covenants in Paragraphs 20, 21, 22 and 23 have been complied with.

25. In the event that the Purchaser fails to comply with Paragraph 21 and 22 within the time required, then the Vendor shall have the right to enter upon the said lands within thirty days notice to the Purchaser, and any such entry by the Purchaser pursuant to the terms hereof shall determine the estate of the Purchaser in the said lands. Notice of the entry may be registered by the Vendor on title to the said lands.

26. Upon such entry by the Vendor, the Purchaser, at its own cost, shall execute and deliver to the Vendor a transfer of the subject lands to the Vendor free and clear of all charges, encumbrances, liens, claims, or adverse interests whatsoever, and the Vendor agrees to pay to the Purchaser the original purchase price for the subject lands, less the
The Purchaser is responsible for water and sanitary sewer servicing to the subject lands and any requirements for storm water management affecting the subject lands.

It is understood and agreed that the cost of preparing and registering any releases on the completion or satisfaction of any conditions in this agreement shall be the responsibility of the Purchaser.

It is understood and agreed that in the event the Purchaser develops the subject property that he may be required to pay development, sewer and other charges levied by the appropriate government bodies.

The Purchaser and Vendor agree that this Offer to Purchase Agreement, and any or all of its terms and conditions, covenants, warranties and restrictions or stipulations shall not expire or merge on the closing of this transaction or upon the registration of a deed on title, but shall survive the closing of this transaction.

This agreement may not be assigned by the Purchaser without the written consent of the vendor, such consent not to be unreasonably withheld or delayed. No assignment will be granted until Clauses 20, 21, 22 and 23 have been complied with.

It is understood and agreed that any real estate commissions or fees are only payable upon successful completion and closing of this transaction.

It is understood and agreed by the Purchaser that the subject lands were acquired by the City of Hamilton pursuant to the Expropriations Act R.S.O. 1990. The expropriating authority (Vendor), must first offer the subject lands to the owners from whom the land was taken, on the terms and conditions of the best offer received by the Vendor.

It is understood and agreed that:

The Purchaser acknowledges and agrees that the Purchaser shall pay their proportionate share of the servicing costs at the time of development (constructing, the roads, and sewers) as noted in Table 1 below. The lifting of the 0.30 metre (0.984 feet) reserve shown as Block 48 on Plan 62M-
1029 attached hereto as Schedule “B” (as per Offer to Purchase) shall be incorporated into the road allowance as part of the subdivision approval.

34 (a) Table 1

<table>
<thead>
<tr>
<th>Lorenzo Drive (west side)</th>
<th>Frontage (m)</th>
<th>per m cost</th>
<th>Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>City Lands</td>
<td>79.565</td>
<td>$1,472.88</td>
<td>$117,189.70</td>
</tr>
<tr>
<td>Collin Crescent (south side of south leg)</td>
<td>Frontage (m)</td>
<td>per m cost</td>
<td>Total Cost</td>
</tr>
<tr>
<td>Undeveloped City Lands</td>
<td>120.225</td>
<td>$1,796.78</td>
<td>$216,017.88</td>
</tr>
</tbody>
</table>

The above figures are approximate, as the City will collect at the time of development of these properties, and will adjust the costs based on the Canadata Construction Cost Index.

34 (b) The Purchaser acknowledges and agrees to reimburse the Vendor for the connection to any of the seven existing 150mm Private Sanitary Drain Connections and to any of the seven existing 20mm Private Water Services Connections, to future lots on the east side of Lorenzo Drive, south of Colin Crescent, at a cost of $4,148.64 per lot. The Purchaser further acknowledges and agrees that the Purchaser is responsible to provide sewer and water service to all other lots within the subject property at the Purchaser’s own expense.

(i) That the Clerk be authorized and directed to execute and issue a Certificate of Completion in the form prescribed pursuant to Section 268 of the Municipal Act incorporating the following:

(i) The subject property, municipally known as 128 Limeridge Road East, was declared surplus by resolution of the City Council on June 27, 2000 by adopting Item 10.8 of the Finance and Administration Committee. Subsequently, on May 25, 2005, City Council approved Item 6.1 of the Planning and Economic Development Committee Report 05-011 declaring the easterly portion of the subject property part of 1306 Upper Wellington Street, surplus to the needs of the City.

(ii) Satisfactory notice has been given to the public of the intended sale by the City of Hamilton through the listing of the property on the Multiple Listing Service (MLS), Chambers Commercial Real Estate Group Inc, Jack Robertson, Associate Broker, and the City of Hamilton’s Web page.

(iii) An internal appraisal of the fair market value of the real property intended to be sold was completed on July 12, 2005.
EXECUTIVE SUMMARY:

The purpose of this report is to request City Council's approval as the approving authority under the provisions of the *Expropriation Act*. Staff is seeking City Council's direction to complete the sales transaction with the Estates of Hendrikus Van De Kuyt and Cornelis Groenwegen, subject to the City's terms and conditions, as stipulated in the Offer to Purchase document.

BACKGROUND:

The information/recommendations contained within this report primarily affect Ward 7.

The subject property is located in the Jerome neighbourhood on the south side of the (“LINC”) between Upper Wellington Street and Upper James Street. The subject site, comprised of vacant land fronting on the east side of Lorenzo Drive and the south side of Colin Crescent, legally described as Part 6 on Plan 62R-16787 (attached as Appendix “B”), having an area of 0.98 hectares (2.420 acres), more or less, and Part 1 on Plan 62R-17178 (attached as Appendix “C”), having an area of 0.03 hectares (0.082 acres), more or less, resulting in a combined area of 1.012 hectares (2.50 acres), more or less.

The former Region expropriated the subject lands in 1994 for the construction of the Lincoln Alexander Parkway “LINC”. It was necessary to acquire all of the former owners land to implement the project. The lands lying south of the freeway corridor are surplus lands remaining from the construction of the “LINC”.

On June 27, 2000, Part 6, Plan 62R-16787 was declared surplus by resolution of City Council by adopting Item #10.8 of the Finance and Administration Committee.

ANALYSIS/RATIONALE:

On May 25, 2005, Council approved Item 6.1 of the Planning and Economic Development Committee Report 05-011 for a change in Zoning of the subject lands from “AA” (Agricultural) District to “C” (Urban Protected Residential, etc.) District, and to declare the easterly 6.0 metre portion of the subject property, described as Part 1 on Plan 62R-17178, surplus to the needs of the City. The easterly 6.0 metre portion has been combined with the City's larger land holding to allow for an appropriate design for

(iv) The purchase price of $757,000 for the subject property is within the range of value, which has been determined through an appraisal of the subject's fair market value.
residential development. The combined area for residential development will mirror the adjacent lotting fabric of the plan of subdivision to the north, Plan 62M-1029, and will also ensure that the new court will align with the court to the north. A copy of Plan 62M-1029 is attached as Appendix “D” to Report PED05185.

Real Estate staff engaged the services of Chambers Commercial Real Estate Group Inc, Jack Robertson, Associate Broker, to act as the City’s agent in the sale of the subject property. As a condition of the listing agreement between the City and Chambers, it was stipulated that all Offers to Purchase must be submitted in a sealed envelope and be submitted by September 20, 2005, noon. In addition, Chambers was instructed to contact all interested parties that had previously expressed an interest in the property. Real Estate staff had been advised by the agent that all parties had been notified and were provided with the opportunity to submit an Offer to Purchase.

As a result of listing the subject property the Real Estate Section received three sealed Offers to Purchase. All offers were equal to the extent of conditions, acceptance and closing dates. In that the recommendation of the offer was conditional upon the Estates of Hendrikus Van De Kuyt and Cornelis Groenwegen waiving their first right to repurchase the lands based on the best offer received, the Estates of Hendrikus Van De Kuyt and Cornelis Groenwegen, the original owners from whom the lands were expropriated, were given an opportunity to submit an offer based on the terms of the best offer received. On November 10, 2005, an executed offer identical to the terms of the best offer received by the City was matched from the Estates of Hendrikus Van De Kuyt and Cornelis Groenwegen. On November 11, 2005, the highest bidder was advised of the offer received from the Estates of Hendrikus Van De Kuyt and Cornelis Groenwegen, which nullifies the best offer received.

An in-house appraisal of the property was completed on January 18, 2005. The sale price of $757,000 is within the range of the appraised value for the subject lands and is acceptable to Real Estate Section staff.

The portion of the parcel of land located on the north side of Colin Crescent was sold in 2004. The development of the northerly parcel, as shown on Appendix “D” attached, shows that the developer had provided full municipal services and laterals as part of the subdivision works. As a result of these subdivision works, a provision has been included within the Offer document to ensure that the prospective purchaser of the subject lands shall pay their proportionate share of the servicing costs at the time of development. In addition, a 0.3 metre reserve shown as Block 48 on Plan 62M-1029 was established as part of the City’s “best efforts” to recoup the servicing costs, which costs had been identified in the terms and conditions of the purchase and sales agreement. Through the execution of the agreement of purchase and sale, the prospective purchaser has acknowledged these costs and the City will collect the servicing costs at the time of the development of the subject lands. Further, the lifting of the 0.3 metre reserve along the lot frontage of the subject lands will be incorporated into the road system upon receipt of the owner(s) proportionate share of the servicing costs.
In addition, upon securing the City's lands, the proponent shall make the necessary application to the City of Hamilton for draft plan of subdivision approval for residential purposes over the subject lands within three months of the acceptance of this transaction. Further, the Purchaser shall register the plan of subdivision within one year of obtaining draft plan approval, provided the said one year period shall be extended for any delays caused (i.e. processing, OMB Hearing).

Based on staff's preliminary design, it is estimated that approximately fifteen new single detached lots may be created. Should development proceed on this basis, the City will realize a tax revenue stream of approximately $90,000 per year through the sale and development of the subject lands (purchase price of home ($300,000) x no. of units (15) x residential mill rate 0.02).

The sale of the subject land will eliminate the financial burden on the City for the costs and liability associated with owning this property and would generate tax revenue through the re-development of the site as part of a residential plan of subdivision. If Council does not recommend the approval of the sale, the Offer to Purchase will become null and void.

**ALTERNATIVES FOR CONSIDERATION:**

In that the subject lands were acquired by the City of Hamilton pursuant to the Expropriations Act, the expropriating authority must first offer the subject lands to the owners from whom the land was taken, on the terms and conditions of the best offer received by the City. Therefore, placing the subject property back on the MLS will involve more staff time and will delay the development of the property and the realization of tax revenue, after which time a better offer may not be realized and the expropriating party shall have the first right to match any subsequent offers received by the City.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

**Financial:** Upon the sale of the subject property, it will become taxable at the appropriate residential tax rate. The City will no longer be responsible for its maintenance costs. Further, if this recommendation is approved, staff will take the necessary steps to have this transaction finalized.

**Staffing:** Staff will take the necessary steps to complete the sale and ensure the conditions are met within the timeframe allotted.

**Legal:** Legal Services will be required to assist in the preparation of the necessary documents required to complete the recommendation set out herein.
POLICIES AFFECTING PROPOSAL:

Pursuant to Section 43 of the Expropriation Act, “Where lands that have been expropriated and are in the possession of the expropriating authority are found by the expropriating authority to be no longer required for its purposes, the expropriating authority shall not, without giving the owners from whom the land was taken, the first chance to repurchase the lands on the terms of the best offer received by the expropriating authority.” In this regard, on September 27, 2005 and October 17, 2005, correspondence via registered mail was sent to Mr. J. Cleworth, of Turkstra Mazza, the solicitor acting on behalf of the Estates of Van de Kuyt and Groenewegen, and to Mr. H. Vande Kuyt, inquiring as to whether the Estates had any interested in re-purchasing the lands on the terms of the best offer received by the City of Hamilton, pursuant to Section 42 of the Expropriation Act. A written response indicating the Estates interest in repurchasing the lands was requested on or before October 14, 2005 and October 31, 2005; failure to respond was deemed as the estates unwillingness in repurchasing the subject land.

On October 31, 2005, a facsimile was received from John Cleworth of Turkstra Mazza, indicating that his clients, the Estates of Hendrikus Van De Kuyt and Cornelis Groenwegen, were interested in repurchasing the lands, and further requested an additional 30 day extension to the October 31, 2005 deadline for submission of an Offer to Purchase. Upon consultation with Legal Services it was determined that an extension would be granted up to November 11, 2005 at 4:00pm, at which time, a fully executed offer based on the terms of the best offer received and a deposit in the amount of seventy six thousand dollars ($76,000) was required in order for the Estates to repurchase the lands, failing which the lands would be sold to the highest bidder.

In the present instance, the former Regional Council, now City Council, was both the expropriating and approving authority. As the subject property is no longer required for the freeway corridor, and pursuant to Section 42 of the Expropriation Act, City Council should approve the Offer to Purchase from the original owners, the Estates of Hendrikus Van De Kuyt and Cornelis Groenwegen, from whom the lands were expropriated, whom are exercising their right at first chance to repurchase the lands. Legal Counsel has reviewed this matter and concurs with the recommendation.

RELEVANT CONSULTATION:

All internal departments and external agencies have been notified of the surplus status of the subject and none have shown interest or objected to the sale.
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
The sale and development opportunities contribute to the strategic goal of a City of Growth and Opportunity.

Environmental Well-Being is enhanced. ☑ Yes ☐ No
The initiative contributes to the strategic goal to encourage development which makes efficient and economical use of infrastructure and services.

Economic Well-Being is enhanced. ☑ Yes ☐ No
Investment in Hamilton is enhanced and supported.

A skilled, innovative and diverse workforce is attracted and retained.
The initiative contributes to the goal of a City that Spends Wisely and Invests Strategically.

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

:MS
Attachs. (4)
APPENDIX "C" TO REPORT PED05185

PLAN 62R-1778

PART OF LOT 13 CONCESSION 7

IN THE GEOGRAPHIC TOWNSHIP OF BARTON

IN THE CITY OF HAMILTON

PLAN No. RA-H-729 SURVEYS