TO: Chair and Members  
Public Works Committee

COMMITTEE DATE: February 3, 2014

SUBJECT/REPORT NO: Proposed Permanent Closure and Sale of a Portion of Public Unassumed Alleyway Abutting 640 Upper James Street, Hamilton (PW14010) (Ward 8)

WARD(S) AFFECTED: Ward 8

PREPARED BY: Marilyn Preston  
(905) 546-2424, Extension 4298

SUBMITTED BY: Gerry Davis, CMA  
General Manager  
Public Works Department

SIGNATURE:  

RECOMMENDATION

(a) That a portion of the public unassumed alleyway abutting 640 Upper James Street, Hamilton, be permanently closed and transferred to the owner of 640 Upper James Street, Hamilton, as shown on Appendix A, attached to Report PW14010 (the “Subject Lands”), subject to the following conditions:

(i) That the applicant makes an application to the Ontario Superior Court of Justice, under Section 88 of the Registry Act, R.S.O. 1990, for an order to permanently close and purchase the Subject Lands;

(ii) That the General Manager, Public Works or his designate sign the appropriate documentation confirming that no public funds have been expended on the Subject Lands to be closed;

(iii) That the documentation regarding the application to the Ontario Superior Court of Justice be prepared by the applicant, to the satisfaction of the City Solicitor;

(iv) That the applicant deposit a reference plan under the Registry Act and that said plan be prepared by an Ontario Land Surveyor to the satisfaction of the Manager, Geomatics and Corridor Management Section and that the applicant deposit a reproducible copy of said plan with the Manager, Geomatics and Corridor Management Section;
(b) That provided the application to the Ontario Superior Court of Justice to permanently close the Subject Lands is approved:

(i) That the City Solicitor be authorized and directed to prepare the by-law to permanently close the highway;

(ii) That the appropriate by-law be introduced and enacted by Council;

(iii) That the Economic Development and Real Estate Division of the Planning and Economic Development Department be authorized and directed to sell the Subject Lands in accordance with the Procedural By-law for the Sale of Land, By-law No. 04-299 for fair market value;

(iv) That the City Solicitor be authorized and directed to register a certified copy of the by-law permanently closing the highway in the proper land registry office, upon confirmation from the Public Works Department that all applicable fees and costs associated with the application have been paid by the applicant;

(v) That the by-law permanently closing the highway does not take effect until a certified copy of the by-law is registered in the proper land registry office;

(vi) That the Public Works Department publish a notice of the City’s intention to pass the by-law pursuant to City of Hamilton By-law 04-299 being a By-law to Establish Procedures, including the Giving of Notice to the Public, Governing the Sale of Land Owned by the City of Hamilton.

EXECUTIVE SUMMARY

The owner of 640 Upper James Street, Hamilton has submitted an application to permanently close and purchase a portion of public unassumed alley which abuts the rear of the applicant’s property on the west. The applicant would like to purchase the Subject Lands to mitigate illegal dumping and remove overgrown vegetation. As well, the applicant may apply in the future to use the Subject Lands for additional parking.

The owner of 636 Upper James Street is opposed to the application. Staff attended the site and have determined that no change to the existing access for 636 Upper James will result by the proposed permanent closure and sale of the Subject Lands. Staff have spoken with the owner of 636 Upper James to clarify that the closure will have no adverse impact on existing access and offered to meet on site to discuss his concerns further, although the property owner did not accept this offer.

Therefore, staff do not oppose the permanent closure and sale of the Subject Lands to the owner of 640 Upper James Street, Hamilton.

Alternatives for Consideration - See Page 5

FINANCIAL - STAFFING - LEGAL IMPLICATIONS

Financial: The Subject Lands will be transferred to the owner of 640 Upper James Street, Hamilton, at fair market value, in accordance with the City’s policy...
regarding the sale of public unassumed alleyways abutting non-residential properties.

Staffing: An agreement to purchase the Subject Lands will be negotiated by the Economic Development and Real Estate Division.

Legal: The City Solicitor will prepare the by-law to permanently close the Subject Lands and will register this by-law in the Registry Office once Council has approved it. The City Solicitor will complete the transfer of the Subject Lands to the owner of 640 Upper James Street, Hamilton, pursuant to an agreement of purchase and sale or Offer to Purchase as negotiated by the Economic Development and Real Estate Division.

HISTORICAL BACKGROUND

There is a public unassumed alleyway west of Upper James Street and running north-south in the block between Fennell Avenue East and Monarch Road. The owner of 640 Upper James Street, Hamilton, has applied to close and purchase the portion of public unassumed alley which abuts the applicant’s property to the rear. The purchase of the Subject Lands will enable the applicant to address issues of maintenance by removing overgrown vegetation and prevent illegal dumping. As well, the applicant may apply in the future to use to extend parking for the applicant’s property which has a commercial use zoning.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

A by-law must be passed to permanently close the Subject Lands in accordance with the Municipal Act, 2001.

The Alleyway Management Program endeavours to address citizen inputs, interests and concerns while balancing the overall benefit to the local community. Staff considers this closure and sale advantageous to the surrounding area in terms of aesthetic improvements and security.

The closure of this alley supports the Strategic Plan objectives of enhancing overall sustainability and implementing processes to improve effectiveness and efficiency.

RELEVANT CONSULTATION

As part of the process to permanently close and sell a public alleyway, notice of the proposed alley closure is sent to all registered owners of properties located within a 400 foot (121.9 metre) radius of the Subject Lands, as shown on Appendix B, attached to Report PW14010. In this instance, there were 53 property owners notified of the proposal. There were 2 responses received in support of the application. The owner of 636 Upper James Street provided a response in opposition to the application based on a concern that the closure would impede existing access, as that owner does not have vehicular access directly from Upper James. Staff attended the site and have determined that no change to the existing access will result by the proposed permanent closure.

OUR Vision: To be the best place in Canada to raise a child, promote innovation, engage citizens and provide diverse economic opportunities.
OUR Mission: WE provide quality public service that contribute to a healthy, safe and prosperous community, in a sustainable manner.
OUR Values: Accountability, Cost Consciousness, Equity, Excellence, Honesty, Innovation, Leadership, Respect and Teamwork.
closure and sale of the Subject Lands. Staff have spoken with the owner of 636 Upper James to clarify that the closure will have no adverse impact on existing access and offered to meet on site to discuss his concerns further, although the property owner did not take staff up on this offer.

The following City Departments and Divisions were provided with a copy of this application and invited to provide comments:

- Planning and Economic Development Department: Development Engineering, Building Services, Economic Development and Real Estate and Planning
- Public Works Department: Engineering Services, Hamilton Water, Operations, Transportation and Corporate Assets and Strategic Planning
- Community and Emergency Services
- Corporate Services Department: Budgets and Finance
- Mayor and Ward Councillor

Public utilities including Horizon Utilities, Hydro One, Bell and Union Gas were circulated for comment and no negative comments were received.

Development Engineering commented that the closure and sale would “eliminate access for the adjacent residents to the remaining open portion of the subject alley exiting onto either Fennell Avenue East or Monarch Road.” However, staff attended the site and determined that the owner of 636 Upper James, which is next to the applicant’s property will continue to have access from the alley to Fennell Avenue East. The rest of the alley, from the applicant’s property south to Monarch Road, is currently not being used for access and is impassable because of overgrown vegetation.

The Building Services Division advises that the Subject Lands are “within two (2) districts. The westerly portion of the alley is within a residential “C” (Urban Protected Residential, etc.) district and the easterly portion of the alley is within the site-specific commercial “H/S-994” (Community Shopping and Commercial, etc.) district.” The “C” portion of the alley does not permit commercial uses or a parking area related to a commercial use. Further, Section 18A(27) of Hamilton Zoning By-law 6593 states “No land in any residential district shall be used for the purpose of vehicular access to or egress from any land in a commercial district or industrial district.” As such, if the applicant decides to utilize the Subject Lands for additional parking, a successful application for a rezoning will be required to permit the intended parking and commercial uses on the portion of the alley presently zoned “C”. The foregoing application cannot proceed until the recommendations contained in Report PW13XXX are approved.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

As there were no objections from any owner of a property sharing a common property line with the Subject Lands and as there will be no impact to the access from Fennell
Avenue East for the owner of 636 Upper James Street, staff do not oppose the permanent closure and sale of the portion of the Subject Lands.

ALTERNATIVES FOR CONSIDERATION

Alternatively, the application to close and sell the Subject Lands could be denied. In that case, the Subject Lands would remain a public unassumed alleyway. However, the City does not currently maintain the Subject Lands and transferring the Subject Lands to private ownership would relieve the City of any potential future maintenance costs and liability therefore staff are not recommending the alternative of retaining the Subject Lands. Should the City retain the Subject Lands it would also result in a loss of revenue from the sale of the lands at fair market value.

ALIGNMENT TO THE 2012 - 2015 STRATEGIC PLAN

Strategic Priority #1
A Prosperous & Healthy Community

*WE enhance our image, economy and well-being by demonstrating that Hamilton is a great place to live, work, play and learn.*

Strategic Objective
1.1 Continue to grow the non-residential tax base.

APPENDICES AND SCHEDULES ATTACHED

Appendix A - Aerial Drawing
Appendix B - Location Plan
Transfer to 640 Upper James Street

PROPOSED PERMANENT CLOSURE
OF A PORTION OF PUBLIC UNASSUMED
ALLEY ABUTTING 640 UPPER JAMES STREET

LEGEND

To be transferred

Report PW14010
Appendix A
Appendix B
Report PW14010

LOCATION PLAN
Proposed Permanent Closure of a Portion of Public Unassumed Alley Abutting
640 UPPER JAMES STREET

LEGEND
SUBJECT LANDS

CITY OF HAMILTON
PUBLIC WORKS DEPARTMENT

DATE: October 18, 2010
REFERENCE FILE NO: PW10_